Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Seventh Legislature

In Regular

Session

Held at Helena, the Seat of Government

January 5, 1981 to April 23, 1981

Compiled by

MONTANA LEGISLATIVE COUNCIL

Room 138
State Capitol
Helena, Montana 59620

Jacqueline Nichols Terrell
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Printed by
COLOR WORLD OF MONTANA, INC.
201 E. Mendenhall, Bozeman, MT 59715

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OFFICERS AND MEMBERS
MONTANA
FORTY-SEVENTH
LEGISLATURE 1981
SENATE

Jean A. Turnage, President of the Senate
Allen Kolstad, President Pro Tempore

29 Republicans
21 Democrats
50 Senators

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
*Aklestad, Gary C.	638 First Street South, Shelby 59474	6	Toole	Republican
*Anderson, Mike	5485 Spaulding Bridge Rd., Belgrade 59714	40	Gallatin	Republican
Berg, Harry K.	3309 17th Ave. So., Great Falls 59405	21	Cascade	Democrat
*Blaylock, Chet	502 3rd Avenue, Laurel 59044	35	Yellowstone	Democrat
*Boylan, Paul F.	3747 So. 19th Rd., Bozeman 59715	38	Gallatin	Democrat
Brown, Bob	Route #2, Whitefish 59937	10	Flathead	Republican
*Brown, Steve	917 Cannon, Helena 59601	15	Lewis and Clark	Democrat
*Conover, Max	P.O. Box 46, Broadview 59015	36	Yellowstone	Democrat
Crippen, Bruce D.	3015 Gregory Drive, Billings 59102	33	Yellowstone	Republican
Dover, Harold L.	712 7th Avenue North, Lewistown 59457	24	Fergus	Republican
Eck, Dorothy	10 West Garfield, Bozeman 59715	39	Gallatin	Democrat
Elliott, Roger H.	P.O. Box R, Columbia Falls 59912	8	Flathead	Republican
Etchart, Mark	514 6th Ave., Glasgow 59230	2	Valley	Republican
*Galt, Jack E.	Martinsdale 59053	23	Meagher	Republican
*Goodover, Pat M.	803 Forest Avenue, Great Falls 59404	22	Cascade	Republican
Graham, Carroll	Drawer K, Lodge Grass 59050	29	Big Horn	Democrat
*Hafferman, William F.	Route 3, Box 1274, Libby 59923	11	Lincoln	Democrat
Haffey, Jack	709 West 4th Street, Anaconda 59711	45	Deer Lodge	Democrat
Hager, Tom	150 Norris Court, Billings 59101	30	Yellowstone	Republican
*Halligan, Michael Lewis	435 University, Missoula 59801	48	Missoula	Democrat
Hammond, H. W. "Swede"	P.O. Box 1366, Malta 59538	3	Phillips	Republican
Hazelbaker, Frank W.	P.O. Box 430, Dillon 59725	41	Beaverhead	Republican
*Healy, John E. "Jack"	624 W. Granite, Butte 59701	44	Silver Bow	Democrat
*Himsl, Matt	305 4th Avenue E, Kalispell 59901	9	Flathead	Republican
Jacobson, Judy H.	1400 West Gold, Butte 59701	42	Silver Bow	Democrat
Johnson, Jan	Box 2549, Missoula 59801	49	Missoula	Republican
Keating, Thomas F.	2003 Willowbrook Way, Billings 59102	32	Yellowstone	Republican
*Kolstad, Allen C.	Box 648, Chester 59522	5	Liberty	Republican
Lee, Gary P.	P.O. Box 6, Rte. 1, Fort Shaw 59443	17	Cascade	Republican
*Manley, John E.	Drummond 59832	14	Granite	Republican
*Manning, Dave	Hysham 59038	25	Treasure	Democrat
Mazurek, Joseph P.	516 Hayes, Helena 59601	16	Lewis and Clark	Democrat
McCallum, George	Niarada 59852	12	Sanders	Republican
*Nelson, Harold C.	704 3rd Street S.E., Cut Bank 59427	7	Glacier	Republican
*Norman, Bill	440 Connell Avenue, Missoula 59801	47	Missoula	Democrat
Ochsner, J. Donald	Broadus Route, Miles City 59301	26	Custer	Republican
*O'Hara, Jesse A.	257-21st Ave. N.W., Great Falls 59404	18	Cascade	Republican
*Olson, S. A.	P.O. Box 928, Glendive 59330	28	Dawson	Republican
*Regan, Pat	204 Mountain View, Billings 59101	31	Yellowstone	Democrat
*Ryan, Patrick L.	3104 2nd Avenue S., Great Falls 59405	19	Cascade	Democrat
*Severson, Elmer D.	Rte. 3, Box 480, Middle Burnt Fork Rd., Stevensville 59870	46	Ravalli	Republican
Smith, Ed B.	P.O. Box 11, Dagmar 59219	1	Sheridan	Republican
*Stephens, Stan	422 3rd Street, Havre 59501	4	Hill	Republican
Stimatz, Lawrence G.	1615 C Street, Butte 59701	43	Silver Bow	Democrat
*Story, Pete	Emigrant 59027	37	Park	Republican
Thomas, Bill	3440 12th Avenue S., Great Falls 59405	20	Cascade	Democrat
*Towe, Thomas E.	2739 Gregory Drive S., Billings 59102	34	Yellowstone	Democrat
Turnage, Jean A.	P.O. Box 450, Polson 59860	13	Lake	Republican
Tveit, Larry J.	Route 1, Box 117, Fairview 59221	27	Richland	Republican
Van Valkenburg, Fred	219 University, Missoula 59801	50	Missoula	Democrat

*Term Expires Jan., 1983
All Other Terms Expire Jan., 1985

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HOUSE OF REPRESENTATIVES

Robert L. "Bob" Marks, Speaker of the House
Art Lund, Speaker Pro Tempore

57 Republicans
43 Democrats
100 Representatives

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Abrams, Hubert J.	Wibaux 59353	56	Wibaux	Democrat
Anderson, Robert Lewis	Box 8, Bigfork 59911	16	Flathead	Republican
Andreason, Aaron W.	325 O'Connell Drive, Lolo 59847	24	Missoula	Republican
Asay, Tom	Rural Route 2, Forsyth 59327	50	Rosebud	Republican
Azzara, James D.	305 S. 4th West, Missoula 59801	96	Missoula	Democrat
Bardanouve, Francis	Box 367, Harlem 59526	6	Blaine	Democrat
Bengtson, Esther G.	Shepherd 59079	59	Yellowstone	Democrat
Bennett, Gary W.	P.O. Box 1516, Columbia Falls 59912	15	Flathead	Republican
Bergene, Toni	511 29th Ave. N.E., Great Falls 59404	36	Cascade	Republican
Bertelsen, Verner L.	Rural Route #1, Ovando 59854	27	Powell	Republican
Brand, Joe	800 Montana Avenue, Deer Lodge 59722	28	Powell	Democrat
Briggs, G. H. "Harold"	505 Skyline Drive, Dillon 59725	82	Beaverhead	Republican
Brown, Dave	3040 Ottawa, Butte 59701	83	Silver Bow	Democrat
Burnett, James H. "Jim"	Box 13B, Route #1, Luther 59051	71	Carbon	Republican
Conn, Alison R.	Box 202, Kalispell 59901	17	Flathead	Republican
Conroy, Thomas R.	607 W. 3rd Street, Hardin 59034	58	Big Horn	Democrat
Cozzens, Chuck	1811 28th St. W., Billings 59102	64	Yellowstone	Republican
Curtiss, Aubyn A.	Box 216, Fortine 59918	20	Lincoln	Republican
Daily, Fred "Fritz"	1057 West Steel, Butte 59701	87	Silver Bow	Democrat
Devlin, Michael G. "Gerry"	Box 186, Terry 59349	52	Prairie	Republican
Donaldson, Gene	3890 Helberg Drive, Helena 59601	29	Lewis and Clark	Republican
Dozier, Robert	P.O. Box 1051, Billings 59103	61	Yellowstone	Democrat
Dussault, Ann Mary	P.O. Box 8207, Missoula 59807	95	Missoula	Democrat
Ellerd, Robert A.	2206 Bridger Drive, Bozeman 59715	75	Gallatin	Republican
Ellison, Orval S.	West Boulder Rt., McLeod 59052	73	Park	Republican
Ernst, Gene N.	P.O. Box 39, Stanford 59479	47	Judith Basin	Republican
Eudaily, Ralph S.	234 Kensington Ave., Missoula 59801	100	Missoula	Republican
Fabrega, W. Jay	812 Grizzly Drive, Great Falls 59404	44	Cascade	Republican
Fagg, Harrison G.	1414 Mystic, Billings 59102	63	Yellowstone	Republican
Feda, G. C. "Jerry"	206 2nd Avenue N., Glasgow 59230	4	Valley	Republican
Gould, R. Budd	2121 35th Avenue, Missoula 59801	98	Missoula	Republican
Hannah, Tom	2228 Beloit, Billings 59102	67	Yellowstone	Republican
Hanson, B. T. "Ben"	3015 Martinwood Rd., Missoula 59801	93	Missoula	Republican
Harp, John G.	134 Park Avenue, Kalispell 59901	19	Flathead	Republican
Harper, Hal	#9 Cracker Drive, Helena 59601	30	Lewis and Clark	Democrat
Harrington, Dan W.	1201 N. Excelsior, Butte 59701	88	Silver Bow	Democrat
Hart, Marjorie	Box 25, Glendive 59330	55	Dawson	Democrat
Hemstad, Andrea "Andy"	P.O. Box 1314, Great Falls 59403	40	Cascade	Republican
Holliday, Gay	Box 316, Roundup 59072	46	Musselshell	Democrat
Huennekens, Herb	3216 Rimrock Rd., Billings 59102	68	Yellowstone	Democrat
Hurwitz, Burt L.	Box 304, White Sulphur Springs 59645	45	Meagher	Republican
Iverson, Dennis	Box 66, Whitlash 59545	9	Liberty	Republican
Jacobsen, Glenn E.	Box 186, Plentywood 59254	1	Sheridan	Democrat
Jensen, William Ray	Rt. 1, Box 75, St. Ignatius 59865	25	Lake	Republican
Kanduch, Joe F., Sr.	Barker Creek, Anaconda 59711	89	Deer Lodge	Democrat
Keedy, Michael H.	498 Van Sant Road, Kalispell 59901	18	Flathead	Democrat
Kemmis, Daniel	Box 8687, Missoula 59807	94	Missoula	Democrat
Kennerly, Roland F.	Box 437, Babb 59411	14	Glacier	Democrat
Kessler, Gerald R.	237 Avenue B, Billings 59101	66	Yellowstone	Democrat
Keyser, Kerry	Box 126, Ennis 59729	81	Madison	Republican
Kitselman, Les	1148 Patriot Street, Billings 59101	60	Yellowstone	Republican
Kropp, Paul K.	Box 520, Malta 59538	5	Phillips	Republican
Lory, Earl C.	4795 Miller Creek Rd., Missoula 59801	99	Missoula	Republican
Lund, Art	Box 806, Scobey 59263	2	Daniels	Republican
Manning, Richard E. "Dick"	810 7th Avenue N., Great Falls 59401	35	Cascade	Democrat
Manuel, Rex	R.R. 1, Box 42, Fairfield 59436	11	Teton	Democrat
Marks, Robert L. "Bob"	Box 302 Lump Gulch Rt., Clancy 59634	80	Jefferson	Republican
Matsko, John G.	P.O. Box 2405, Great Falls 59403	38	Cascade	Republican
McBride, Kathleen	3111 Carter Street, Butte 59701	85	Silver Bow	Democrat
McLane, Jean	Box 190, Laurel 59044	72	Yellowstone	Republican
Menahan, William "Red"	1304 W. 5th Street, Anaconda 59711	90	Deer Lodge	Democrat
Metcalf, Jerry	201 Vawter Street, Helena 59601	31	Lewis and Clark	Democrat

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Meyer, Darryl	5306 4th Avenue S., Great Falls 59405	42	Cascade	Republican
Moore, Jack K.	1200 32nd Street S. #85, Great Falls 59405	41	Cascade	Republican
Mueller, Glenn H.	P.O. Box 334, Libby 59923	21	Lincoln	Republican
Neuman, Ted	Box 87, Vaughn 59487	33	Cascade	Democrat
Nilson, L. H. "Les"	917 3rd Avenue So., Great Falls 59405	37	Cascade	Democrat
Nordtvedt, Kenneth	118 Sourdough Ridge, Bozeman 59715	77	Gallatin	Republican
Oberg, Danny	612 16th Street, Havre 59501	8	Hill	Democrat
O'Connell, Helen G.	703 4th Avenue S.W., Great Falls 59404	34	Cascade	Democrat
O'Hara, David A.	209 Avenue E, Billings 59101	62	Yellowstone	Republican
Pavlovich, Robert J. "Bob"	1375 Harrison Avenue, Butte 59701	86	Silver Bow	Democrat
Phillips, John E.	P.O. Box 7031, Great Falls 59406	43	Cascade	Republican
Pistoria, Paul G.	2421 Central Ave., Great Falls 59401	39	Cascade	Democrat
Quilici, Joe	3040 Kossuth, Butte 59701	84	Silver Bow	Democrat
Robbins, Ken	Conner 59827	91	Ravalli	Democrat
Roth, Audrey G.	P.O. Box 489, Big Sandy 59520	10	Chouteau	Republican
Roush, Glenn A.	P.O. Box 195, Cut Bank 59427	13	Glacier	Democrat
Ryan, John A.	SR 59360 A, Box 8, Brusett 59318	49	Garfield	Republican
Sales, Walter R.	Rt. 1, Box 37, Manhattan 59741	79	Gallatin	Republican
Schultz, James M.	1210 7th Ave. N., Lewistown 59457	48	Fergus	Republican
Seifert, Carl A.	Route 1, Box 45B, Polson 59860	26	Lake	Republican
Shelden, Arthur H. "Art"	Route 1, Box 1650, Libby 59923	22	Lincoln	Democrat
Shontz, John M.	Rt. 1, Box 129A, Sidney 59270	53	Richland	Democrat
Sivertsen, Robert	Box 2226, Havre 59501	7	Hill	Republican
Smith, Carl M.	Olive 59343	57	Powder River	Republican
Spilker, Barbara J. "Bobby"	801 Harrison Avenue, Helena 59601	32	Lewis and Clark	Republican
Stobie, Chris H.	Eddy Route 2, Box 44, Thom. Fls. 59873	23	Sanders	Republican
Switzer, L. Dean	Richey 59259	54	Dawson	Republican
Teague, Wes	2902 Minnesota, Billings 59101	69	Yellowstone	Democrat
Thoft, Bob	1520 So. Burnt Fork Rd., Stevensville 59870	92	Ravalli	Republican
Underdal, Melvin	Box 605, Shelby 59474	12	Toole	Republican
Vincent, John	209 East Lamme, Bozeman 59715	78	Gallatin	Democrat
Vinger, Orren C.	517 Johnson, Wolf Point 59201	3	Roosevelt	Republican
Waldron, Steve	P.O. Box 5233, Missoula 59806	97	Missoula	Democrat
Wallin, Norm	2422 Springcreek Drive, Bozeman 59715	76	Gallatin	Republican
Williams, J. Melvin "Mel"	P.O. Box 245, Laurel 59044	70	Yellowstone	Democrat
Winslow, Calvin	1240 Crawford, Billings 59102	65	Yellowstone	Republican
Yardley, Dan	P.O. Box 482, Livingston 59047	74	Park	Democrat
Zabrocki, Carl J.	Rte. 2, Box 3166, Miles City 59301	51	Custer	Democrat

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188		534	An act to clarify the laws relating to administrative enforcement of support for dependent children; correcting an error in section 40-5-202, MCA; and providing for a hearing in cases involving a support debt based upon a court judgment; amending sections 40-5-202 and 40-5-222, MCA. ..... Page 263
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190		537	An act to provide a 5-year statute of limitations for actions based on a statutory debt created by the payment of public assistance; amending section 27-2-211, MCA. ..... Page 266
191		598	An act to provide for the setting of a date for execution of a criminal defendant following dissolution of a court-ordered stay of a previous execution date; amending section 46-19-103, MCA. ..... Page 266
192		630	An act to authorize the Department of Community Affairs to provide security at state airports whenever required by federal regulations; amending section 67-2-302, MCA. ..... Page 267
193		637	An act to provide veterans of the Vietnam conflict era service credits for the Teachers' Retirement System comparable to those granted veterans of World War II and the Korean conflict and to provide funding for these credits through increased employer contributions; amending sections 19-4-404 and 19-4-605, MCA. ..... Page 268
194		643	An act to remove the limitation on the number of deputies that may be hired by a county sheriff in any county of the state; repealing section 7-32-2103, MCA. ..... Page 270
195		690	An act to generally revise and clarify chapters 21 and 22 of Title 46, MCA, pertaining to postconviction and habeas corpus relief; amending sections 46-21-101, 46-21-102, 46-21-104, 46-21-105, 46-21-201, 46-21-203, and 46-22-101, MCA. ..... Page 270
196		860	An act to amend section 3 of Chapter 111 of the Laws of 1981 to provide for a delayed effective date. ..... Page 272
197		296	An act to submit to the qualified electors of Montana an amendment to Article VIII, section 13, of the Montana Constitution removing the restriction on investment of public funds in corporate capital stock and the requirement that school fund investments bear a fixed interest rate. ..... Page 272
198	14		An act providing for fines and assessment of costs in felony and misdemeanor criminal cases; allowing community service as a condition of deferred or suspended sentences; amending section 46-18-201, MCA. ..... Page 273

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199	16		An act to require oil and gas developers or operators to give written notice to surface owners of intent to begin drilling operations; to require oil and gas developers and operators to compensate surface owners for damages caused by drilling and production operations; and to allow such compensation to be made in annual installments under certain conditions; and providing an effective date. ..... Page 276
200	120		An act to generally revise and clarify the law relating to juries; amending sections 3-15-201, 3-15-401, 3-15-403, 3-15-502, 3-15-503, and 3-15-506, MCA; and repealing sections 3-15-202, 3-15-314, and 3-15-508, MCA. ..... Page 278
201	183		An act repealing the rollback tax on agricultural land; declaring certain taxes discharged; amending sections 15-7-207, 15-7-209, and 15-7-210, MCA; repealing sections 15-7-204, 15-7-205, 15-7-211, 15-7-214, and 15-7-215, MCA; and providing an immediate effective date. ..... Page 280
202	255		An act to eliminate certain taxes for lineal descendants; amending sections 72-16-313 and 72-16-321, MCA; providing applicability; and providing an immediate effective date. ..... Page 281
203		15	An act to increase the average number belonging (ANB) number for foundation aid to school districts with unusual enrollment increases; amending section 20-9-314, MCA. ..... Page 283
204		16	An act to amend the Governor's energy supply emergency powers to provide for regular monitoring of energy supplies and demand; to require submission of reports on petroleum supplies and consumption; to provide for confidentiality of certain information submitted; and amending sections 90-4-301, 90-4-302, and 90-4-305, MCA. ..... Page 284
205		35	An act to raise the general bonus payment paid to expanded school districts; amending section 20-6-401, MCA. ..... Page 288
206		98	An act clarifying and revising the definition and involuntary retirement provisions concerning the Highway Partolmen's Retirement System; extending benefits to certain surviving spouses; and eliminating subrogation of benefits; amending sections 19-6-101, 19-6-501, and 19-6-503, MCA; repealing section 19-6-105, MCA. ..... Page 289
207		99	An act prohibiting deferral of imposition of sentence in a felony case for a defendant convicted of a felony on a prior occasion; providing exceptions; and amending sections 46-18-201 and 46-18-222, MCA. ..... Page 291
208		106	An act amending the definition of rural area as the term applies to the Rural Electric and Telephone Cooperative Act; amending section 35-18-102, MCA. ..... Page 292
209		112	An act to amend section 76-5-1117, MCA, providing for broadened statutory methods by which cities, towns, and counties can assess tax for payment of bonds. ..... Page 293
210		147	An act to provide the payment of interest on death benefits until the date of payment; amending section 19-3-1202, MCA; and providing an immediate effective date. ..... Page 294
211		257	An act to provide an exception from examination for mechanical breakdown insurance agents; amending section 33-17-212, MCA; and providing an immediate effective date. ..... Page 295
212		284	An act to amend the motor vehicle insurance liability laws to allow limitation of the insurer's liability in cases where there is more than one vehicle covered under a single insurance policy. ..... Page 296
213		285	An act to amend the Uniform Common Trust Act; defining affiliated banks or trust companies; providing exclusions; amending sections 32-1-703 and 32-1-706, MCA. ..... Page 297
214		409	An act establishing fair trade practices for the distribution and exhibition of motion picture films; prohibiting blind bidding; prohibiting payment of minimum guarantees on percentage pictures; providing information on trade screenings. ..... Page 298
215		457	An act to allow the trustees of a county high school district that is not unified with an elementary district to authorize a levy of not more than 2 mills for the operation of an adult education program; amending section 20-7-705, MCA. ..... Page 300
216		462	An act to clarify the laws relating to disaster and emergency services expenditures and the local emergency levy; amending sections 10-3-311 and 10-3-405, MCA. ..... Page 301
217		473	An act to allow municipalities to destroy old records after a period of 5 years; amending section 7-5-4124, MCA. ..... Page 302

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219		528	An act to provide that a portion of the tax imposed on table wine sold in state liquor stores is made available to the earmarked revenue account; amending section 16-1-411, MCA....Page 304
220		540	An act for adjusting the registration date for aircraft to eliminate conflicts with other taxation laws; amending sections 15-24-304, 67-3-201, and 67-3-202, MCA. ....Page 305
221		584	An act amending section 19-4-302, MCA, to allow participation in the Teachers' Retirement System by persons employed as teachers by special education cooperatives....Page 307
222		625	An act to allow creditors to charge a late payment charge of 1 ½ percent on acounts receivable for merchandise sold at retail, starting 30 days after the obligation is incurred; to require creditors to supply debtors with a periodic statement of such accounts; and provide for an immediate effective date....Page 308
223		661	An act allowing for an extended approval period of more than 1 year for a preliminary plat under the Montana Subdivision and Platting Act; amending section 76-3-610, MCA....Page 309
224		681	An act adopting the Multistate Highway Transportation Agreement....Page 310
225		711	An act to generally revise the laws regulating Notaries Public; removing the power and duty of Notaries Public to demand acceptance and payment of bills of exchange; revising the fees that may be charged by Notaries Public; amending sections 1-5-416 and 1-5-418, MCA....Page 315
226		748	An act providing for safety inspections for motor carriers; providing for implied consent to inspections by motor carriers; amending sections 44-1-1005, 61-10-141, 69-12-201, and 69-12-203, MCA....Page 316
227		749	An act providing for safety standards and inspections for motor vehicles used in commerce weighing in excess of 26,000 pounds gross vehicle weight; amending sections 69-12-102 and 69-12-201, MCA....Page 318
228	245		An act to generally revise and clarify the laws relating to health and the family; amending sections 40-1-203, 40-1-205, 40-8-126, 50-15-101, 50-15-108, 50-15-111, 50-15-301, 50-15-303, 50-15-304, and 50-20-110, MCA....Page 320
229	275		An act to prohibit a life insurer from contracting or agreeing to name a funeral director, undertaker, or mortuary as beneficiary under an insurance contract; amending section 33-18-301, MCA....Page 324
230	276		An act to limit the condemnation power of the Department of Fish, Wildlife, and Parks; amending sections 23-1-102 and 87-1-209, MCA....Page 325
231	284		An act to clarify when a vote of electors is required to incur an indebtedness on behalf of a local government for airport purposes; amending section 67-10-402, MCA....Page 327
232	306		An act to require state agencies to report the apparent theft of state money or property to the Attorney General at the same time it is reported to the Legislative Auditor; amending section 5-13-309, MCA....Page 328
233	328		An act to revise the provisions on municipal vacancy in office to include the same grounds applicable to vacancy in state offices; amending section 7-4-4111, MCA. ....Page 329
234	336		An act allowing the Board of Pardons to delegate certain hearing functions; amending section 46-23-104, MCA....Page 329
235	350		An act providing for the distribution of administrative expenses of the Public Employees' Retirement Division of the Department of Administration among the Judges', Highway Patrol, Sheriffs', Game Wardens', and Municipal Police Retirement Systems; amending sections 19-5-202, 19-6-203, 19-7-202, 19-8-203, and 19-9-203, MCA....Page 330
236	405		An act to eliminate certain duties of the Department of Community Affairs under the Montana Subdivision and Platting Act to establish minimum subdivision regulation requirements for local governments; amending sections 76-3-504, 76-3-603, and 76-4-129, MCA; and repealing sections 76-3-502 and 76-3-508, MCA....Page 331
237	445		An act to clarify the authority of a rural electric or telephone cooperative to provide in its bylaws for the establishment of an amount of compensation to be paid to its

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			directors while engaged in official business of the cooperative; amending section 35-18-311, MCA....Page 333
238		525	An act to provide that 90 percent of the property tax collected by a county on airline flight property by reason of a state airport being located in the county be paid to the State Treasurer to be deposited in the earmarked revenue fund to the credit of the Department of Community Affairs for aeronautical purposes; amending section 15-23-106, MCA....Page 334
239	83		An act to establish the criminal offense of failure to return rented or leased personal property; establishing a penalty therefor; and providing an immediate effective date....Page 335
240	230		An act to allow physical therapists to evaluate without referral; amending section 37-11-104, MCA....Page 336
241	279		An act amending section 16-1-411, MCA, to standarize the timing of imposition of the table wine tax on wine distributors; to impose a penalty and interest charge for failure of a table wine distributor to file a return or to pay tax on imported table wine; to provide a transition period; and providing an effective date....Page 336
242	309		An act to require any person, firm, corporation, or association that performs investigations or reviews for a state professional or occupational licensing board to make the records of the review or investigation available to the board and the Legislative Auditor....Page 337
243	310		An act to reestablish the Board of Medical Examiners under existing statutory authority and rules; adding public members to the board; changing board members' terms from 7 to 4 years; modifying reporting requirements for medical malpractice claims by insurers; amending sections 2-8-103, 2-15-1605, and 37-3-402, MCA; and providing an immediate effective date....Page 338
244	312		An act to delete the requirement that appointments by the Governor of members to the Boards of Dentistry, Podiatry Examiners, Pharmacists, Nursing Home Administrators, Speech Pathologists and Audiologists, Hearing Aid Dispensers, Veterinarians, and Physical Therapists be made from lists submitted by private associations; providing that the Governor may consider nominees by licensees, private associations, and members of the public when making appointments to licensing and regulatory boards; amending sections 2-15-1606, 2-15-1608, 2-15-1609, 2-15-1611, 2-15-1615, 2-15-1616, 2-15-1618, and 2-15-1628, MCA....Page 342
245	314		An act to allow family members the right to continue individual family disability insurance coverage upon the death of the named insured or the divorce, separation, or annulment of marriage of the spouse from the named insured; and to establish conditions and requirements of continued coverage....Page 346
246	407		An act to specify the disciplinary authority of licensing boards in the Department of Professional and Occupational Licensing....Page 348
247	424		An act to provide for Senate confirmation of members of the Boards of County Printing, Dentistry, Osteopathic Physicians, Podiatry Examiners, Pharmacists, Nursing, Nursing Home Administrators, Optometrists, Chiropractors, Radiologic Technologists, Speech Pathologists and Audiologists, Hearing Aid Dispensers, Psychologists, Veterinarians, Barbers, Cosmetologists, Massage Therapists, Physical Therapy Examiners, Sanitarians, Landscape Architects, Professional Engineers and Land Surveyors, Plumbers, Athletics, and Veterans' Affairs, and the Commission for Human Rights; amending sections 2-15-1102, 2-15-1606 through 2-15-1618, 2-15-1625 through 2-15-1628, 2-15-1631, 2-15-1652, 2-15-1653, 2-15-1655, 2-15-1661, 2-15-1706, and 2-15-2202, MCA....Page 349
248	427		An act to reestablish the Board of Nursing under existing statutory authority and rules and to generally revise the laws relating to licensure of nurses; modifying board makeup; providing for staggered 4-year terms for board members; revising definitions of nursing; authorizing temporary nursing permits; providing for a late renewal fee; amending sections 2-8-103, 2-15-1610, 37-8-102, 37-8-103, 37-8-201, 37-8-202, 37-8-301, 37-8-302, 37-8-406, 37-8-407, 37-8-409, 37-8-415 through 37-8-417, 37-8-431, 37-8-441, and 37-8-442, MCA; and providing an immediate effective date....Page 361
249		174	An act to provide for the waiver of tuition for nonresident children; amending sections 20-5-303 and 20-5-313, MCA....Page 371
250		275	An act to revise and clarify the timing of retirement payments to police officers and firefighters by the State Auditor; amending sections 19-9-702, 19-9-1007, 19-10-305, and 19-11-512, MCA....Page 372
251	613		An act to abolish the Teachers' Retirement Annuity Reserve Fund and to combine the functions of the annuity reserve fund with those of the pension accumulation

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			fund; amending section 19-4-605, MCA; and repealing section 19-4-604, MCA. ....Page 375
252		789	An act amending section 22-1-502, MCA, to allow the State Law Library of the State of Montana to occupy quarters in buildings other than the State Capitol. ....Page 376
253	110		An act deleting the requirement that a decree of water right be certified to evoke an exception to the filing fee; and providing an immediate effective date; amending section 85-2-225, MCA. ....Page 377
254	232		An act amending sections 19-3-801 and 19-3-805, MCA, to include the amount paid by the employer for administrative expenses for the Public Employees' Retirement System in the employer contribution rate and to provide an earlier date for payment of membership fees; repealing section 19-3-303, MCA; and providing an effective date. ....Page 377
255	256		An act to change the population prerequisite for municipal incorporation; amending sections 7-2-4101 and 7-2-4103, MCA; and providing an immediate effective date. ....Page 378
256	455		An act requiring notification of nonprofit corporations of expiration of their corporate existence; providing for the reinstatement of expired nonprofit corporations; and providing an immediate effective date. ....Page 379
257		66	An act changing the time when interest is drawn on an award in a condemnation proceeding from the time possession is surrendered to the time when the summons is served; amending section 70-30-302, MCA. ....Page 381
258		167	An act to include dentists in the freedom of choice requirement for disability insurance policies regarding selection of health care practitioners; amending section 33-22-111, MCA ....Page 382
259		220	An act to preclude criminal or civil liability of persons donating food, apparently fit for human consumption, for free distribution ....Page 383
260		263	An act to allow service performed for the United States Government pursuant to Title IV, the Intergovernmental Personnel Act of 1970, to be credited in the Montana State Game Wardens' Retirement System. ....Page 384
261		264	An act to allow service performed for the United States Government pursuant to Title IV, the Intergovernmental Personnel Act of 1970, to be credited in the Montana Public Employees' Retirement System. ....Page 384
262		305	An act to use market value as of January 1 of the assessment year in assessing motor vehicles subject to staggered registration; amending sections 15-8-202 and 61-3-503, MCA; and providing an applicability date. ....Page 385
263		343	An act to make housetrailers and mobile homes eligible for property tax relief when destroyed by natural disaster; amending section 15-16-611, MCA. ....Page 387
264		520	An act to revise and clarify the social security provisions relating to separate state retirement systems, referendum by the Governor, management of the social security account, and collection of delinquent payments; amending sections 19-1-104, 19-1-301, 19-1-602, and 19-1-706, MCA. ....Page 387
265		552	An act to extend for a 2-year period the 3-year exemption from the severance tax on oil and gas for natural gas produced from a well 5,000 feet deep or deeper; amending section 15-36-121, MCA; and providing an effective date. ....Page 389
266		569	An act authorizing utility loans for installation of recognized nonfossil forms of energy generation systems in a dwelling on the same basis as utility loans for installation of energy conservation systems in a dwelling; raising the tax credit ceiling on such loans by utilities and financial institutions; providing an immediate effective date; and amending section 15-32-107, MCA. ....Page 389
267		635	An act to reallocate the cigarette tax and to delete references in the Cigarette Tax Law to bonds that have been retired; amending sections 16-11-111, 16-11-114, 16-11-119, and 17-5-408, MCA; and providing an effective date. ....Page 390
268		667	An act generally revising and clarifying the adjudication of water rights provisions of Title 3, chapter 7, part 3, and Title 85, chapter 2, part 2, MCA; allowing for the appointment of more than one water master in each water division; providing for supervision and administration by the Supreme Court; providing a filing fee for the filing of exempt claims; providing that a preliminary decree may be issued for any interrelated portion of a water division; providing that a preliminary decree may be issued pending the negotiation of a compact; allowing a water judge to extend the

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			time limit for requesting a hearing on a preliminary decree; providing for the suspension of legal proceedings and the filing of federal claims upon termination of suspension; amending sections 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, and 85-2-704, MCA; and providing an immediate effective date. ....Page 392
269		678	An act to revise the provisions relating to city judges for towns; requiring the appointment or designation of a city judge as a town official; revising certain qualifications for municipal office; defining the term of office for a Justice of the Peace designated by a town to act as city judge; and permitting a Justice of the Peace so designated to act as city judge in all cases arising out of violations of ordinances in which the town is party; amending sections 3-11-201, 3-11-205, 7-4-4103, and 7-4-4104, MCA....Page 396
270		693	An act permitting fire department relief associations of pure volunteer fire departments in first- and second-class cities to be managed under the same provisions as relief associations in third-class cities and towns; amending sections 19-11-301 and 19-11-401, MCA; and providing an immediate effective date. ....Page 398
271	137		An act to provide for the licensing of community group homes for the developmentally disabled and to allow for the adoption of rules relating to that licensing; amending sections 53-20-305 and 53-20-307, MCA....Page 398
272	330		An act authorizing the State Treasurer to establish a lending program for state securities; and providing an immediate effective date....Page 399
273	368		An act requiring certification by the county treasurer that there are no delinquent taxes outstanding on property proposed to be subdivided; amending section 76-3-611, MCA....Page 400
274	432		An act to merge the Department of Professional and Occupational Licensing and certain functions of the Department of Community Affairs with the Department of Business Regulation and to rename that department the Department of Commerce; to allocate certain functions of the Department of Community Affairs to other departments of state government; to generally revise the laws to conform to the merger; to abolish other functions of the Department of Community Affairs, including the state aircraft pool; to provide for a state information and research system; repealing sections 2-15-1101, 2-15-1601, and 67-2-201 through 67-2-205, MCA; and providing effective dates....Page 401
275		238	An act to exempt regulated lenders from limitations on the rate of interest which regulated lenders may charge and to exempt regulated lenders from all usury statutes; amending sections 31-1-106, 31-1-107, 32-2-402, and 32-3-601, MCA; suspending the operation of section 32-1-436, MCA; and providing an immediate effective date and termination date....Page 407
276		239	An act to eliminate usury limits under the Montana Retail Installment Sales Act; amending sections 31-1-241 and 31-1-243, MCA; providing an immediate effective date and termination date....Page 409
277		246	An act to delete reference to the county welfare department as a potential investigator for the purposes of investigating families in dissolution custody disputes and providing for the awarding of the cost of investigation in the final order of dissolution; amending section 40-4-215, MCA. ....Page 411
278		357	An act to clarify the State Fire Marshal's authority concerning the alteration, repair, or demolition of buildings declared to be a public nuisance; amending section 50-62-107, MCA....Page 412
279		377	An act to generally revise and clarify part 2 of the Securities Act of Montana relating to registration of dealers and securities; amending sections 30-10-201 through 30-10-206 and 30-10-210, MCA....Page 413
280		378	An act to generally revise and clarify prohibited practices and penalties under the Securities Act of Montana; amending sections 30-10-301 and 30-10-307, MCA. ....Page 424
281		380	An act to revise and add fees charged under the Securities Act of Montana; amending section 30-10-209, MCA. ....Page 426
282		408	An act to extend and amend the Bond Validating Act; amending sections 17-5-202 and 17-5-205, MCA; and providing an immediate effective date....Page 427
283		425	An act to permit a municipality to grant a nonexclusive franchise without submitting the application therefor to the electors; amending section 7-5-4321, MCA; and providing an immediate effective date. ....Page 428

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285		504	An act to revise the qualification requirements for Superintendent of the Galen State Hospital; amending section 53-6-302, MCA....Page 429
286		517	An act to repeal the law relating to eugenical sterilization and the Board of Eugenics; repealing sections 2-15-2304 and 53-23-101 through 53-23-105, MCA. ....Page 430
287		618	An act to provide a method for allocating funding for secondary vocational and industrial arts programs based upon the relative additional costs incurred by high school districts in providing such programs; and providing an immediate effective date....Page 430
288		629	An act to clarify the reporting requirements for persons subject to the gross proceeds tax and metalliferous mines license tax and to require any necessary assay to be completed prior to mixture of ores and concentrates and shipment from this state; amending sections 15-23-802 and 15-37-104, MCA. ....Page 431
289		824	An act to include in the crime of aggravated assault the infliction of bodily injury upon a person who is responsible for the care or custody of a prisoner; amending section 45-5-202, MCA. ....Page 433
290	124		An act to change the deadline for submission of information by agencies to the budget director; amending section 17-7-112, MCA. ....Page 434
291	166		An act to generally revise the Pork Research and Marketing Act; raising assessments; revising allocation of expenditures; amending sections 81-8-605, 81-8-607, and 81-8-610, MCA; repealing section 81-8-613, MCA; and providing an effective date. ....Page 434
292	193		An act reestablishing the Board of Radiologic Technologists under the Department of Professional and Occupational Licensing; providing for a new termination date; and amending section 2-8-103, MCA....Page 435
293	217		An act relating to the administration of the Department of Professional and Occupational Licensing; providing that the department allocate central services costs based on equitable criteria, prescribe format of forms used by licensing boards; require applicants for licensure or renewal to report any legal or disciplinary actions against them relating to their area of licensure; and requiring the department to submit a biennial report to the Governor and the Legislature describing each licensing board's activities during the biennium; and amending section 37-1-101, MCA. ....Page 438
294	400		An act to clarify that upon petition for rehearing of a Supreme Court decision the adverse party may file objections whether or not a reply is requested by the court; amending section 46-20-705, MCA....Page 439
295	175		An act to revise the cost of copies of court proceedings; amending section 3-5-604, MCA....Page 440
296	195		An act to revise provisions pertaining to radiologic technologists; amending sections 2-15-1614 and 37-14-302, MCA; and repealing section 37-14-312, MCA.....Page 441
297	228		An act to amend laws relating to foster care facilities; to clarify financial responsibility for payment for children placed in foster care facilities; to require court review of children in foster placements through a foster care review committee; amending sections 41-3-104, 41-3-501, 41-5-801, and 53-4-112, MCA. ....Page 442
298	241		An act establishing minimum standards for Medicare Supplement Insurance; requiring the Commissioner of Insurance to adopt rules establishing policy provision requirements, minimum benefit standards, loss ratio standards, and disclosure standards for such policies; and giving the Commissioner of Insurance authority to adopt rules establishing an informational brochure for such policies and authority to adopt rules establishing captions or notice requirements for certain nonmedicare supplement policies identifying them as such; and providing an immediate effective date....Page 444
299	268		An act to assess the costs of impaneling a jury against parties who fail to inform the court of a settlement of the issues. ....Page 448
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302	333		An act to require the use of simplified language in policies, contracts, and certificates of life, disability, credit life, and credit disability insurance; to establish minimum standards for language used in those forms; to adopt the Flesch Reading Ease Test for readability or other tests in the discretion of the Commissioner of Insurance; and granting the Commissioner of Insurance power to approve forms. ....Page 450
303	334		An act to generally revise and clarify the insurance laws of the State of Montana; amending sections 33-1-501, 33-2-109, 33-2-110, 33-2-116, 33-2-119, 33-2-307, 33-2-705, 33-2-708, 33-2-709, 33-3-204, 33-3-205, 33-3-432, 33-7-405, 33-7-509, 33-7-525, 33-7-526, 33-15-101, 33-15-303, 33-18-210, 33-22-111, 33-22-205, 33-22-232, 33-22-301, 33-22-812, 33-24-102, 33-24-103, 33-25-102, and 33-30-1001, MCA; and repealing sections 33-3-501 and 33-7-527 through 33-7-530, MCA....Page 453
304	448		An act to permit the Department of Institutions to contract with public or private corporations for the confinement of selected inmates; amending section 53-30-106, MCA....Page 473
305	462		An act to revise the method used by the Department of Highways to sell an interest in real property; amending sections 60-4-202 and 60-4-203, MCA; and providing an immediate effective date....Page 474
306		738	An act to clarify that it is lawful to take wildlife to protect persons or livestock. ....Page 474
307	311		An act to reestablish the Commission for Human Rights under existing statutory authority and rules; amending section 2-8-103, MCA; and providing an immediate effective date. ....Page 475
308	382		An act to clarify and revise the issuance and payment of special improvement district and rural special improvement district bonds; clarifying that the bonds are not general obligation bonds; restricting the levying of a tax to provide funds for the revolving fund to instances when the revolving fund does not exceed 5 percent of the outstanding bonds; and requiring that funds in the revolving fund may not be transferred to the general fund if the balance in the revolving fund is less than 5 percent; amending sections 7-12-2170, 7-12-2182, 7-12-2186, 7-12-4202, 7-12-4222, and 7-12-4227, MCA....Page 478
309		25	An act to authorize public agencies to enter into cooperative agreements with Indian tribes located in Montana; amending sections 53-30-204 and 87-1-228, MCA; and repealing section 20-3-333, MCA....Page 482
310		95	An act tc eliminate the liability of relatives of applicants for public assistance; repealing sections 53-2-401 through 53-2-408, MCA....Page 487
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534	325		An act to revise the salary schedule of a youth court probation officer; amending section 41-5-704, MCA....Page 1111
535	352		An act to insure the availability of basic levels of benefits under disability insurance policies and contracts for the care and treatment of mental illness; amending sections 33-22-701 through 33-22-704, MCA. ....Page 1111
536	356		An act to amend section 15-36-101, MCA, to provide a single percentage rate of 5 percent to be used in computing the severance tax on petroleum collected during fiscal years 1982 and 1983 and 6 percent to be used in computing the severance tax on petroleum collected thereafter; providing an applicability date and an immediate effective date. ....Page 1114
537	361		An act to exempt domestic international sales corporations from the corporate license tax; and to tax the shareholders of domestic international sales corporations; amending sections 15-30-111 and 15-31-102, MCA....Page 1116
538	367		An act to allow the sale of coal mined under leases from the Board of Land Commissioners to foreign persons; amending section 77-3-305, MCA; and repealing section 77-3-315, MCA....Page 1118
539	376		An act revising and clarifying the Montana Major Facility Siting Act to increase the exemption limit for an addition to a facility; revising the definition of a facility; exempting facilities subject to the Montana Strip and Underground Mine Reclamation Act; expanding exemption criteria for the relocation, reconstruction, or upgrading of a facility; clarifying appellate review procedures; clarifying which decisions of the Board of Health and Environmental Sciences and Department of Health and Environmental Sciences are conclusive; requiring the board to waive the alternative site study, advance notice, and minimum adverse environmental impact requirements when a facility will be constructed in a county that has experienced severe unemployment problems because of a plant closure; amending sections 75-20-104, 75-20-202, 75-20-211, 75-20-216, 75-20-218, 75-20-220, 75-20-304, and 75-20-406, MCA; and providing an immediate effective date. ....Page 1119
540	377		An act to simplify utilization of funds available for financing the foundation program and permissive portions of public school budgets; amending sections 20-9-345, 20-9-351, and 20-9-352, MCA....Page 1128
541	399		An act to provide for voter approval, amendment, or repeal of a master plan by initiative or referendum; amending section 76-1-604, MCA....Page 1130
542	422		An act to extend for 2 years the deadline to expend or encumber coal area highway reconstruction funds appropriated prior to June 30, 1979; providing for local government consultations; providing an immediate effective date; amending section 2 of Chapter 540, Laws of 1977. ....Page 1131
543	426		An act to reestablish the Board of Optometrists under existing statutory authority and rules; providing for staggered 4-year terms for board members; removing restrictions against advertising; clarifying the authority to fit contact lenses; updating the grounds for revocation of a license; amending sections 2-8-103, 2-15-1612, 37-10-301, and 37-10-311, MCA; and providing an immediate effective date....Page 1132
544	452		An act to reestablish the Board of Barbers under existing statutory authority and rules; revising board makeup; exempting cosmetologists from prohibitions under barbering laws; giving the board authority to grant temporary licenses to

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545	459		An act to generally revise the laws governing outfitters and guides in the state of Montana; amending sections 2-15-3403, 87-4-101 through 87-4-106, 87-4-121 through 87-4-128, 87-4-130, 87-4-131, and 87-4-141 through 87-4-144, MCA.....Page 1144
546		18	An act to reduce individual income tax on interest income earned by a taxpayer age 65 or older; amending section 15-30-111, MCA; and providing an applicability date. ....Page 1153
547		26	An act to control and regulate the use of private consultants by state agencies. ....Page 1155
548		27	An act to clarify that the individual income tax base exemption is $800; amending sections 1, 3, and 5 of Initiative No. 86 and section 9, Chapter 698, Laws of 1979; and providing an immediate effective date. ....Page 1157
549		45	An act providing an ad hoc cost-of-living increase in service and disability retirement and survivorship allowances payable to members of the Public Employees', Teachers', Highway Patrolmen's, Sheriffs', and Game Wardens' Retirement Systems and their beneficiaries and to members of the Municipal Police Retirement System retired on or after July 1, 1975, and their beneficiaries; providing a minimum monthly benefit allowance for certain members of these retirement systems and their beneficiaries; providing funding for the cost-of-living increase and minimum monthly benefit allowance; amending sections 19-3-801, 19-4-605, 19-4-802, 19-4-804, 19-4-1001, 19-6-402, 19-6-404, 19-7-404, 19-8-504, 19-9-702, and 19-9-703, MCA; and providing an effective date. ....Page 1162
550		63	An act to exempt from income taxation private or corporate retirement benefits not in excess of a certain amount; amending section 15-30-111, MCA; and providing an effective date. ....Page 1170
551		135	An act permitting a member of the Teachers' Retirement System to purchase service credits for employment in private schools; amending section 19-4-401, MCA. ....Page 1172
552		161	An act authorizing the Department of Administration to develop and administer a statewide incentive program to award state employees for cost-saving proposals; and providing a termination date. ....Page 1173
553		179	An act to amend sections 76-4-105 and 76-4-128, MCA, to increase the lot fees charged for services rendered in the review of subdivisions; to allow more reimbursement to local governments performing subdivision review functions.....Page 1175
554		200	An act to increase funds available for management of the state's wildlife resources by increasing the fees for hunting, fishing, and related licenses and permits; removing the 7-year kill limitation on certain game animals; and removing the priority status for unsuccessful special elk and antelope license applicants; amending sections 87-2-104, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-403, 87-2-501, 87-2-505, 87-2-701, 87-2-702, 87-2-705, 87-2-706, and 87-2-903, MCA; repealing sections 87-2-303, 87-2-703, and 87-2-721, MCA; and providing separate effective dates. ....Page 1176
555		202	An act to amend sections 50-60-101 and 50-60-102, MCA, relating to the State Building Code, in order to generally revise and clarify the applicability of building construction standards; and providing an immediate effective date.....Page 1181
556		209	An act to broaden the courses of action that a judge may take when he determines that a fair trial cannot be had in the county in which the prosecution is pending; amending section 46-13-203, MCA.....Page 1183
557		213	An act to broaden the discovery of witnesses and defenses in criminal cases; amending section 46-15-301, MCA. ....Page 1184
558		286	An act to provide a state-chartered building and loan association the same rights as a federally-chartered savings and loan association; and providing an immediate effective date. ....Page 1185
559		290	An act to increase the monthly payments to victims of silicosis from $175 to $200; amending sections 39-73-103, 39-73-104, and 39-73-107, MCA.....Page 1185
560		301	An act to increase the ability of victims of criminal mischief to recover restitution from the offender; and to increase to $2,500 the amount of recovery allowed against

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562		390	An act to allow the use of any publicly owned building as a polling place; amending section 13-3-105, MCA.....Page 1188
563		445	An act to create a procedure to obtain a variance from the rules issued pursuant to the Montana Solid Waste Management Act.....Page 1189
564		609	An act to provide a graduated schedule for the tax rate applicable to improvements on real property for new and expanding manufacturing industry; providing for local government approval; amending section 15-6-134, MCA; providing an effective date. .....Page 1190
565		642	An act providing for the establishment of ambient air quality standards for fluorides through limitations upon the concentration of fluorides in forage grasses, hay, and silage; amending section 75-2-202, MCA; providing an immediate effective date. .....Page 1192
566		674	An act creating a Firefighters' Unified Retirement System and providing for its administration; amending sections 19-9-1007, 19-11-401, 19-11-403, 19-11-504, 19-11-512 through 19-11-514, 19-11-606, and 19-12-301, MCA; repealing sections 19-11-301 through 19-11-303, MCA; and providing effective dates.....Page 1192
567		676	An act to modify earmarked funding for the crime victims compensation program requiring that funding for the program be from fines and forfeitures of highway patrol issued citations; amending section 53-9-109, MCA.....Page 1210
568		692	An act to raise the value of advertising matter or novelties that can be furnished to a beer retailer by a brewer or wholesaler; amending section 16-3-241, MCA. .....Page 1210
569		702	An act to limit the maximum fee that the Department of Administration can charge for receiving and processing elevator and escalator condition reports; amending section 50-60-701, MCA.....Page 1211
570		775	An act to repeal provisions relating to withholding for nonresident's income tax; amending sections 15-30-311 and 20-15-403, MCA; repealing sections 15-30-221 through 15-30-227, MCA.....Page 1212
571		834	An act to exempt certain capital gains and dividend income from personal income tax or corporate tax for investments in small business investment companies; and providing an immediate effective date.....Page 1213
572		835	An act to generally clarify and revise the local option motor fuel tax; allowing the Department of Revenue to collect the tax; establishing filing procedures for distributors; establishing penalty and interest for delinquent tax, enforcement procedures, and a statute of limitations; amending sections 7-14-301 through 7-14-304, MCA. .....Page 1214
573		838	An act revising the audit fees charged to local governments; creating a revolving account; appropriating money to the revolving account; providing for audits of local governmental entities every 2 years; providing for a penalty for nonpayment of bills submitted to local governments for auditing; amending sections 2-7-503, 2-7-505, 2-7-506, 2-7-516, and 20-9-203, MCA; and providing an immediate effective date. .....Page 1216
574		859	An act to provide for the deduction of charitable contributions and gifts made by corporations in computing net income and corporate license tax liability; amending section 15-31-114, MCA.....Page 1219
575	33		An act to generally revise and clarify the laws of the State of Montana in accordance with the mandate to the Code Commissioner contained in section 1-11-204, MCA.....Page 1221
576	42		An act to increase the interest for delinquent property tax payment from ⅔ of 1 percent per month to 5/6 of 1 percent per month for the first $3,000 per taxpayer of each year's delinquent taxes and 1 percent per month for each year's delinquent taxes in excess of $3,000 per taxpayer; amending sections 15-16-101, 15-16-102, and 15-17-303, MCA; and providing an applicability date.....Page 1300
577	77		An act to extend the authority of the State Board of Examiners, upon recommendation of the Department of Administration, to issue and sell notes in anticipation of taxes and revenues appropriated for expenditure during a fiscal year; providing that

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			the full faith and credit and taxing power of the state shall be pledged for the payment of all notes; and providing that the act is effective on passage by a two-thirds vote of the members of each house of the Legislature and approval by the Governor; amending sections 17-1-202 and 17-1-204, MCA. ..... Page 1303
578	126		An act specifying the basis for assessing agricultural machinery, trucks, and other motor vehicles; amending sections 15-1-101 and 15-8-111, MCA. ..... Page 1304
579	129		An act regulating conversions of group life insurance and group disability insurance and providing for continuation of group coverage under certain circumstances; amending sections 33-20-1209 and 33-20-1210, MCA; and providing an effective date. ..... Page 1306
580	240		An act to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations; to provide a procedure for access by private persons to information gathered about them for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connnection with insurance transactions; to give the commissioner of insurance the power to investigate and issue cease and desist orders for violations of this act; to provide for equitable relief in the district court and for a penalty. ..... Page 1310
581	243		An act to delegate authority to the Department of Natural Resources and Conservation to authorize diversions from the Yellowstone River Basin under Article X of the Yellowstone River Compact, section 85-20-101, MCA, on behalf of the State of Montana; providing for legislative review; and providing an effective date. ..... Page 1328
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583	286		An act to generally revise the laws relating to the prisoner furlough program; redefining the program as the supervised release program; restricting the time qualification for prisoner elibibility; transferring the responsibility of establishing a program from the department to the prisoner; restricting the prisoner's rights under the hearing procedures used for admission into the program; transferring supervision of the prisoner from the sponsor to a probation and parole officer; streamlining the hearing procedures used for determining whether a violation of a program condition has occurred; amending sections 45-7-306, 45-9-101, 46-18-202, 46-18-401, 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, and 46-23-426, MCA; and repealing sections 46-23-402 through 46-23-404, 46-23-406, 46-23-413 through 46-23-415, and 46-23-423 through 46-23-425, MCA. ..... Page 1333
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585	460		An act to require the county assessor to release the rollback tax lien; amending section 15-7-209, MCA. ..... Page 1341
586	485		An act to create a small claims court procedure within justices' courts; providing for jurisdiction of the small claims court, the method of commencing actions, hearings, counterclaims, subpoena powers, removal to justice's court, and appeals to district court; amending sections 3-10-1001, 3-10-1004, and 25-31-112, MCA; repealing Title 25, chapter 35, MCA; and providing an immediate effective date. ..... Page 1342
587	487		An act to continue the coal tax oversight subcommittee of the revenue oversight committee for the biennium ending June 30, 1983; amending section 2, Chapter 619, Laws of 1979; and providing an immediate effective date. ..... Page 1349
588		9	An act to make the law relating to good time allowance more restrictive; amending section 53-30-105, MCA. ..... Page 1350
589		17	An act to provide that the same interest rate apply to overpayment refunds as to delinquent tax due for the income and corporation tax; to clarify the period during which refunds and credits may be granted; and to provide for extensions of the period by agreement; amending sections 15-30-149 and 15-31-531, MCA; and providing an immediate effective date and an applicability date. ..... Page 1351
590		34	An act to revise the income limitations applicable to property tax exemption for 100 percent disabled veterans; amending section 15-6-211, MCA; and providing an applicability date. ..... Page 1353
591		38	An act to amend section 2-4-307, MCA, relating to omissions from the Administrative Rules of Montana or the Montana Administrative Register. ..... Page 1354
592		97	An act to clarify and revise the definitions and the procedures for refunding members' contributions and for payment of involuntary retirement allowances used in

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594		215	An act to provide district courts and justices' courts with concurrent original jurisdiction in certain criminal cases amounting to misdemeanor; amending section 3-5-302, MCA; and providing an immediate effective date. ....Page 1358
595		350	An act to assure that once an applicant passes one portion of the real estate examination, he is not required to repeat that portion and eliminating any restrictions on how frequently an applicant can take the examination; amending section 37-51-303, MCA; and providing an effective date. ....Page 1359
596		367	An act to insure that statutes that impose new duties on school districts provide a specific means of financing....Page 1360
597		372	An act to provide a method for reviewing disability retirement benefits of the judges', highway patrolmen's, sheriffs', game wardens', and municipal police officers' retirement systems; amending sections 19-9-901, 19-9-904, and 19-9-905, MCA. ....Page 1361
598		389	An act providing for annual or quarterly registration of motor vehicles owned by nonresidents temporarily employed in Montana; subjecting certain of these vehicles to taxation; and establishing window decals as the form of license evidencing quarterly registration; amending sections 15-24-301, 15-24-302, and 61-3-703, MCA. ....Page 1365
599		474	An act to provide a graduated schedule for the tax rate applicable to improvements on real property; providing for local government approval in their jurisdiction; amending section 15-6-134, MCA; providing an immediate effective date. ..Page 1368
600		478	An act authorizing the issuance and sale of $5 million principal amount long-range building program bonds by the Board of Examiners to finance costs of state capitol building improvement; appropriating income from the capitol building land grant to the payment of the bonds; and providing an immediate effective date. ....Page 1369
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602		510	An act to amend sections 18-2-201 and 18-2-202, MCA, to provide that sureties must be acceptable to governmental body and that surety companies must be licensed, and to authorize the use of deposits and securities in lieu of surety bonds on government construction projects....Page 1371
603		558	An act to revise the compensation provisions relating to deputy sheriffs and undersheriffs; amending sections 7-4-2505 and 39-3-406, MCA....Page 1372
604		563	An act increasing the amount of Long-Range Building Program bonds; providing for agreements among the Board of Examiners, the Division of Workers' Compensation, and the Employment Security Division; and amending section 17-5-410, MCA; providing an immediate effective date. ....Page 1376
605		580	An act establishing compensation and expenses for elected state officials, supreme court justices, district judges, the commissioner of campaign finances and practices, the chairman and members of the State Tax Appeal Board, legislators; amending sections 2-16-405, 3-5-211, 5-2-301, 13-37-106, and 15-2-102, MCA....Page 1377
606		646	An act to revise and clarify the state laws relating to child day-care facilities; to clarify the rulemaking authority of the Department of Health and Environmental Sciences; to require registration of family day-care homes and group day-care homes; to provide a penalty for failure to comply; amending sections 53-4-501 through 53-4-516, MCA. ....Page 1379
607		765	An act to provide for municipal regulation of municipally owned utilities; to establish maximum increases allowed; to require reporting to the Public Service Commission and the Montana Consumer Counsel; amending section 69-3-101, MCA; and providing a period of effectiveness....Page 1386
608		872	An act increasing the size of legislative representation on the Capitol Building and Planning Committee; clarifying the committee's responsibilities with regard to

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609		874	An act to establish a Water Resources Oversight Committee; appropriating funds for the committee; and providing an effective date and an expiration date.....Page 1390
610		876	An act to amend section 3-2-304, MCA, to reflect the current number of justices and to conform it to Article VIII, section 14 of the Constitution of the State of Montana by providing that expenses of the Supreme Court may be paid only out of funds appropriated therefor. ....Page 1391
611		225	An act to submit to the qualified electors of Montana an amendment to Article VI, section 10, of the Montana Constitution to provide that the Secretary of State shall conduct a poll of all legislators when the Legislature is not in session and the Governor vetoes a bill....Page 1392
612		652	An act to remove the prohibition of disposal of certain radioactive materials in the State of Montana enacted by Initiative 84 and providing for a regulatory system; providing for the control and condemnation of land used for disposal of mill tailings from uranium and thorium ore processing; and revising the laws concerning radiation control; amending sections 75-3-102, 75-3-103, 75-3-104, 75-3-201, 75-3-202, 75-3-302, 75-3-303, 75-30-102, MCA, and section 1 of Initiative 84; providing an effective date; and providing for a referendum. ....Page 1393
613	283		An act to exempt business inventories from taxation; providing tax credits for business inventory taxes paid prior to exemptions; amending sections 15-6-136, 15-6-202, 15-8-104, and 15-24-301, MCA; and repealing sections 15-24-402 and 15-24-403, MCA; and providing effective dates. ....Page 1402
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HB	865		An act to appropriate money to various state agencies for the fiscal ending June 30, 1981; permitting certain appropriations to the Department of Revenue to continue to the next biennium; providing for other matters relating to the appropriations; and providing an immediate effective date. ..... Page 1525
HB	868		An act to appropriate money from the general fund to the highway reconstruction trust account and to the highway earmarked account. ..... Page 1526
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SJR	1		A Joint Resolution of the Senate and the House of Representatives of the State of Montana to adopt joint rules to govern their proceedings ..... Page 1533
SJR	2		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the Montana Criminal Justice System, including alternative ways and effects of redistricting Montana's District Court system, establishing a statewide district attorney system for criminal prosecutions, and providing for a statewide system of representation for indigents accused of crimes; requiring a report of the findings of the study to the Legislature. ..... Page 1555
SJR	8		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study on the use of grants and contracted services by state government in natural resource and environmental science areas. ..... Page 1557
SJR	10		A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to remove alcohol fuel production permits and information from the confidentiality requirements of the internal revenue code and urging the Bureau of Alcohol, Tobacco and Firearms to make this information available ..... Page 1558
SJR	11		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Reagan Administration and Congress to fully fund forest fire protection assistance. ..... Page 1559
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SJR	18		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States to increase weed control and management programs on federal, state, and private lands and to allow federal land management agencies to enter into cooperative agreements with state and local weed management agencies..... Page 1562
SJR	19		A Joint Resolution of the Senate and the House of Representatives of the State of Montana calling for the Congress of the United States to propose and submit to the states an amendment to the Constitution of the United States requiring, with certain exceptions, a balanced federal budget. ..... Page 1563
SJR	20		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Montana Supreme Court to prepare proposed legislation for consideration by the 48th Legislature to reconcile conflicts between the Montana Rules of Evidence and the statutory provisions on evidence contained in the Montana Code Annotated. ..... Page 1564
SJR	24		A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the continuation of federal funding for the magnetohydrodynamics engineering test facility in Montana. ..... Page 1565
SJR	25		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study on funding methods used by school districts to finance public pension plans. ..... Page 1566
SJR	26		A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing modification of the administrative rule governing the assessment of commercial furniture and fixtures. ..... Page 1567
SJR	27		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative audit committee in conjunction with its performance audit to consider the current and ongoing public utility procedures and practices of the public service commission to determine the impact thereof on both consumers and utilities and requiring a report of the findings of the study to the legislature. ..... Page 1568
SJR	28		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative finance committee to study the efficiency of the seven area agencies on aging and the state aging services bureau in Montana and their accountability to the people they serve. ..... Page 1570
SJR	29		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the need to clarify the definition of youth in need of supervision, of the policies and practices of agencies financing services for youth placed out of their homes, of the need for a simplified mechanism to distribute funds for youth placed out of their homes, and of the problems of chemically dependent and emotionally disturbed youth in private and public institutions; and requiring a report and recommendations to the Legislature. ..... Page 1571
SJR	30		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of delays in the administration of appeals of criminal cases in the criminal justice system of Montana and means by which the institutional causes of these delays could be lawfully eliminated; requiring a report of the findings of the study to the Legislature. ..... Page 1572
SJR	33		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the insurance laws of the State of Montana and of the insurance industry as it relates to Montana and requiring a report of the findings of the study to the 48th Legislature..... Page 1573
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SJR	35		A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the promulgation of a rule by the Department of Revenue providing for the use of the most recent census date or population estimate date established by the census bureau, U.S. Department of Commerce, in determining all-beverage liquor license quotas..... Page 1575
SJR	36		A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the assignment to an appropriate interim committee of a study of Montana's Code of Ethics for public officers and employees and its administration and enforcement..... Page 1577

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		HJR 7	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress and President of the United States to enact legislation that annually adjusts personal income tax liability for inflation and to enact any changes in federal tax rates in a generally open and direct manner that does not exploit the hidden taxing mechanism of increasing tax by incorporating inflated income. ..... Page 1582
		HJR 8	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to establish an interim committee to study salaries of legislative staff of permanent committees. ..... Page 1583
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		HJR 16	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting Ronald Reagan, the President of the United States, to revise the Executive Order of February 1972, banning the use of toxicants from predator control, to allow the supervised use of 1080 to control predators. ..... Page 1585
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		HJR 18	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging that the Federal Energy Regulatory Commission relicense the Kerr Hydroelectric Project to the Montana Power Company. ..... Page 1587
		HJR 19	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging state purchasing offices and the Department of Administration to purchase rerefined oil that meets quality specifications and directing the Department of Health and Environmental Sciences to study the feasibility of establishing a system for collecting used oil in the State of Montana. ..... Page 1588
		HJR 20	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the current overall functions and staffing of the Department of Institutions to determine the effectiveness of the delivery of institutional services by the state; and requiring a report of the findings of the study to the Legislature. ..... Page 1589
		HJR 21	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States to enact amendatory legislation to return to states the right to regulate or participate in regulating mines relating to mine safety and health standards. ..... Page 1590
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HJR	46		A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Legislative Finance Committee by assigned to study the laws relating to postsecondary vocational-technical centers for the purpose of generally clarifying, updating, supplementing, and revising such laws. ..... Page 1605
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SR	3		A Resolution of the Senate of the State of Montana to Ronald Reagan, President of the United States, the Commissioner of the United States Food and Drug Administration, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from Montana, the Honorable Ron Marlenee, Congressman from the Second Congressional District, the Honorable Pat Williams, Congressman from the First Congressional District, and Ted Schwinden, Governor of the State of Montana, encouraging them to have rescinded a regulation of the Federal Food and Drug Administration that would cause the closure of the Deer Lodge research unit which conducts drug research at the Montana State Prison because such closure would cause great economic hardship for the community of Deer Lodge, Montana. ..... Page 1628
SR	5		A Resolution of the Senate of the State of Montana recognizing and encouraging citizen participation in the International Year of Disabled Persons. ..... Page 1630
SR	6		A Resolution of the Senate of the State of Montana requiring all Senate supplies to be stored under lock and key and all furniture belonging to the Senate to be labeled and not moved during the interim. ..... Page 1630

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HR	1		A Resolution of the House of Representatives of the State of Montana to adopt rules to govern its proceedings in addition to joint rules. ..... Page 1631
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SESSION LAWS

ENACTED BY THE

Forty-seventh Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1981

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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SESSION LAWS

CHAPTER NO. 1

AN ACT AMENDING SECTION 5-2-302, MCA, RELATING TO COMPENSATION OF MEMBERS OF THE LEGISLATURE SERVING ON LEGISLATIVE COMMITTEES WHEN THE LEGISLATURE IS NOT IN SESSION; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-302, MCA, is amended to read:

"5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, members of the legislative council, legislative subcommittees, and select and interim committees, while engaged in *authorized* committee business, are entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to *one full day's pay at the* rate of a classified state employee, *described in 5-2-301* for *each 24-hour period of time (from midnight to midnight), or portion thereof,* spent away from home on *authorized* committee business. *However, if time spent for business other than authorized committee business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day.*"

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved January 29, 1981.

CHAPTER NO. 2

AN ACT TO AMEND SECTION 39-51-1301, MCA, TO ELIMINATE THE PENALTY FOR LATE UNEMPLOYMENT CONTRIBUTION REPORTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due contributions. (1) Contributions unpaid on the date on which they are due and payable,

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as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month.

(2) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(3) When failure to pay contributions *on* time was not caused by willful intent of the employer, the division may abate the penalty *and interest*."

Approved February 2, 1981.

CHAPTER NO. 3

AN ACT TO LIMIT THE EXPERIENCE RATING COMPUTATION OF EMPLOYERS TO THE MOST RECENT 3 FISCAL YEARS ENDING SEPTEMBER 30 OF EACH YEAR AND TO ADJUST ACCORDINGLY TIME REQUIREMENTS INVOLVING EXPERIENCE RATING REQUIREMENTS; AMENDING SECTIONS 39-51-1121, 39-51-1213, 39-51-1214, 39-51-1215, AND 39-51-1217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1121, MCA, is amended to read:

"39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means *the reporting period ending September 30* preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means *December 31* immediately following the computation date. The division may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division of the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on *September 30.*

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any of the quarters in the 3 fiscal years immediately preceding the computation date."

Section 2. Section 39-51-1213, MCA, is amended to read:

"39-51-1213. Classification of employers for experience rating purposes. (1) The division shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of *October 1* of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below for the calendar year 1980 and for each calendar year thereafter:

(a) Each employer is given an "experience factor" which is contributions paid minus benefits charged on each employer's account *for the most recent 3 fiscal years immediately preceding the computation date,* divided by his average annual taxable payroll rounded to the next lower dollar amount for the *same* 3 fiscal years. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned

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for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1213.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years."

Section 3. Section 39-51-1214, MCA, is amended to read:

"39-51-1214. Benefit payments chargeable to employer experience rating accounts. Benefits paid shall be charged to the account of the covered employer, except cost reimbursement and governmental employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits. *No* charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(1) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(2) if paid in accordance with the extended benefit program triggered by either national or state indicators."

Section 4. Section 39-51-1215, MCA, is amended to read:

"39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid *for the most recent 3 fiscal years immediately preceding the computation date,* prior to the cutoff date. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account *for the most recent 3 fiscal years ending September 30.* Nothing in this section grants any covered employer or individual in his service

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a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund."

Section 5. Section 39-51-1217, MCA, is amended to read:

"39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section, except that for calendar year 1979, the tax rate Schedule X shall be applied as provided for in [39-51-1202]."

Approved February 10, 1981.

CHAPTER NO. 4

AN ACT TO CLARIFY AND REVISE THE AMOUNT AN INDIVIDUAL TAXPAYER MUST EARN BEFORE FILING AN INCOME TAX RETURN; LIMITING THE APPLICATION TO TAXABLE YEARS BEGINNING IN 1980; AMENDING SECTION 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than *$1,470* and married individuals not filing separate returns and having a combined gross income for the taxable year of more than *$2,940* shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by *$1,250* for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required

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to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer."

Section 2. **Applicability.** Section 1 is applicable only to taxable year 1980.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 11, 1981.

CHAPTER NO. 5

AN ACT TO INCLUDE THE VIETNAM CONFLICT WITHIN THE DEFINITION OF THE TERM "WAR OR DECLARED NATIONAL EMERGENCY"; AMENDING SECTION 10-2-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201 through 10-2-206, the following definitions apply:

(1) The term "veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon conditions other than dishonorable; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

(2) The term "war or declared national emergency" includes:

(a) The Civil War;

(b) The Spanish-American War;

(c) The Philippine insurrection;

(d) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

(e) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

(f) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; *and*

(g) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

(3) The term "surviving spouse" means an unremarried surviving spouse of a veteran.

(4) The word "percent" means percent of the total aggregate points of the examination referred to."

Approved February 13, 1981.

CHAPTER NO. 6

AN ACT AMENDING SECTION 27-6-206, MCA, TO EXEMPT HEALTH CARE PROVIDERS NOT IN PRACTICE FROM PAYMENT OF THE MEDICAL MALPRACTICE PANEL ASSESSMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund

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may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment shall be set by the director, who shall allocate a projected cost among health care providers on a per capita basis, *except that an individual not engaged in the practice of his profession in Montana is exempt from payment of the assessment.* The director may provide a different allocation upon approval by the supreme court. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of professional and occupational licensing has under 37-3-313 in connection with physicians' annual registration fees."

Approved February 13, 1981.

CHAPTER NO. 7

AN ACT TO INCREASE REIMBURSEMENT FOR EXPENSES OF MEMBERS OF THE LEGISLATURE FROM $40 TO $45; MAKING THE INCREASE APPLY AFTER JANUARY 4, 1981; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to *$45* a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

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(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session."

Section 2. **Applicability.** Section 1 applies after January 4, 1981.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 13, 1981.

CHAPTER NO. 8

AN ACT TO CLARIFY THE REVISED MONTANA UNIFORM GIFTS TO MINORS ACT BY REMOVING THE MORE RESTRICTIVE OF TWO MUTUALLY EXCLUSIVE OPTIONS AS TO WHOM THE DONOR CAN SELECT AS THE ORIGINAL CUSTODIAN; AMENDING SECTION 72-26-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-26-201, MCA, is amended to read:

"72-26-201. Manner of making gift. (1) An adult person may, during his lifetime, make a gift of a security, money, a life insurance policy, or an annuity contract to a person who is a minor on the date of the gift:

(a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person, or a trust company, followed in substance by the words "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act";

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, ... (name of donor), hereby deliver to .... (name of custodian) as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act, the following security(ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them)

.....

(signature of donor)

..... (name of custodian) hereby acknowledges receipt of the above-described security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: .....

.....
(signature of custodian);

(c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult, or a trust company, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act";

(d) if the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, or a trust company, followed in substance by the words "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor, and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection nor his designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects the consummation of the gift."

Approved February 17, 1981.

CHAPTER NO. 9

AN ACT TO REMOVE THE LIMITATION ON THE AMOUNT OF THE LICENSE FEE THAT MAY BE IMPOSED ON SHEEP FOR THE PURPOSE OF PREDATOR CONTROL; AMENDING SECTIONS 81-7-303 AND 81-7-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-303, MCA, is amended to read:

"81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep coming 1 year old or over in the county on the regular assessment date of each year to pay a license fee *in an amount to be determined by the board on a* per

head *basis for* sheep so owned or possessed by him in the county. All owners or persons in possession of any sheep coming 1 year old or over coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 shall also be subject to payment of the license fee herein prescribed.

(2) Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal, of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate.

(3) When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only."

Section 2. Section 81-7-305, MCA, is amended to read:

"81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program and cause said licenses to be secured and issued and the fees collected for the following year in such amount as will defray the cost of administering the program so established. The license fee determined and set by the board shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied.

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee or petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year."

Approved February 18, 1981.

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CHAPTER NO. 10

AN ACT REQUIRING THE SELLER OF LIVESTOCK TO REQUEST A DEPARTMENT OF LIVESTOCK INSPECTION AND TO PAY THE INSPECTION FEE; AMENDING SECTION 81-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when:

(a) such sale or change of ownership transaction involves five or fewer such animals; or

(b) the change of ownership transaction:

(i) is between:

(A) members of the same family;

(B) a member of one family and the same family's business entity; or

(C) the same family's business entities;

(ii) is accomplished without the livestock changing premises; and

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(iii) involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all

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brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Approved February 18, 1981.

CHAPTER NO. 11

AN ACT TO ALLOW THE OPERATORS OF POLICE AND AUTHORIZED EMERGENCY VEHICLES DISCRETION IN THE USE OF AUDIBLE OR VISUAL SIGNALS AND TO ELIMINATE DUPLICATION IN THE LAW REGARDING DISPLAY OF A RED LIGHT; AMENDING SECTION 61-8-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-107, MCA, is amended to read:

"61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle,

when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of a police vehicle or authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the speed limits so long as he does not endanger life or property;

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when *the vehicle is* making use of *an* audible *or* visual *signal, or both,* meeting the requirements of 61-9-402.

(4) The foregoing provisions shall not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Approved February 18, 1981.

CHAPTER NO. 12

AN ACT TO PROVIDE FOR TRANSFER OF OWNERSHIP OF MOTOR VEHICLES BY INSURANCE COMPANIES AFTER SETTLEMENT OF INSURANCE CLAIMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of ownership of vehicles by insurance company.** When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a signed and notarized certificate of ownership. If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to section 1.

Approved February 20, 1981.

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CHAPTER NO. 13

AN ACT TO CLARIFY THE FEES APPLICABLE TO CERTAIN VEHICLES; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTION 61-3-521, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-521, MCA, is amended to read:

"61-3-521. Fee in lieu of tax for certain vehicles. (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers. The fee is in addition to annual registration fees.

(2) The provisions of 61-10-208 do not apply to a vehicle that qualifies under subsection (1) above.

(3) The fee imposed by subsection (1) *above* need not be paid by a dealer for vehicles that constitute inventory of the dealership."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 20, 1981.

CHAPTER NO. 14

AN ACT TO PROVIDE FOR AN INCREASED TURN SIGNALING DISTANCE OUTSIDE BUSINESS, RESIDENTIAL, OR URBAN DISTRICTS; AMENDING SECTION 61-8-336, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-336, MCA, is amended to read:

"61-8-336. Turning movements and required signals. (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2) A signal of intention to turn right or left, *other than when passing,* when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning *in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.*

(3) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

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(4) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal."

Approved February 20, 1981.

CHAPTER NO. 15

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF JUSTICE TO SEND TO EACH COUNTY ASSESSOR AND THE DEPARTMENT OF REVENUE A LIST OF THE CERTIFICATES OF OWNERSHIP FOR HOUSETRAILERS AND MOBILE HOMES ISSUED WITHIN THE COUNTY DURING THE PRECEDING CALENDAR QUARTER; AMENDING SECTION 61-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of division of motor vehicles — records. (1) The division of motor vehicles shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership thereof, and of all dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record shall show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle;

(i) if a truck or trailer, the number of tons' capacity or G.V.W. if imprinted on manufacturer's identification plate;

(j) such other information as may from time to time be found desirable.

(3) The division shall file applications for registration received by it from the county treasurers of the state and register the vehicles therein

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described and the owners thereof in suitable books or on index cards, as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle;

(d) such other index of registration as the division considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the division shall have the authority and it shall be its duty to destroy all records and files which have ceased to be of any value.

(7) The division may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

(8) All records shall be open to inspection during all reasonable business hours, and the division shall furnish any information from the records upon payment by the applicant of the cost of transcribing the information requested.

(9) Within 30 days following the end of each calendar quarter, the division shall send to each county assessor and to the department of revenue a list of the certificates of ownership for housetrailers and mobile homes issued during the preceding calendar quarter to owners within each assessor's respective county. The list must contain the name and address of the owner or the names and addresses of joint owners and a description of the housetrailer, including the year built and the serial number."

Approved February 20, 1981.

CHAPTER NO. 16

AN ACT AMENDING SECTION 5-1-103, MCA, TO CLARIFY ITS APPLICATION IN THE EVENT THE POLITICAL MAJORITY IN A HOUSE OF THE LEGISLATURE CHANGES BETWEEN APPOINTMENT OF AND FILLING A VACANCY ON THE DISTRICTING AND APPORTIONMENT COMMISSION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-1-103, MCA, is amended to read:

"5-1-103. Vacancy on commission. *(1)* In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

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(2) In the event the appointing authority at the time a vacancy occurs is of the opposite political party than that of the appointing authority that made the appointment that is vacant, the majority or minority leader of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall designate the successor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 26, 1981.

CHAPTER NO. 17

AN ACT TO DESIGNATE THE OFFICERS OF THE SENATE AND HOUSE OF REPRESENTATIVES AND TO PROVIDE THAT THE SECRETARY OF THE SENATE, CHIEF CLERK OF THE HOUSE, AND CHAPLAINS BE APPOINTED, NOT ELECTED, AND BE SUBJECT TO CONFIRMATION; AMENDING SECTION 5-2-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-221, MCA, is amended to read:

"5-2-221. Officers and employees of the senate and house of representatives. (1) The officers of the senate include a president, a president pro tempore, *a majority floor leader, a minority floor leader, a majority whip, and a minority whip.*

(2) The officers of the house of representatives include a speaker, a speaker pro tempore, *a majority floor leader, a minority floor leader, a majority whip, and a minority whip.*

(3) *The president, and president pro tempore of the senate and the speaker and speaker pro tempore of the house* shall be elected by the house *of which they are a member.*

(4) The majority floor leader, minority floor leader, majority whip, and minority whip of the senate and house shall be elected by their respective caucuses.

(5) A secretary of the senate, sergeant-at-arms, and chaplain shall be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant-at-arms, and chaplain shall be appointed by the speaker subject to confirmation by the house."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 26, 1981.

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CHAPTER NO. 18

AN ACT TO PERMIT A SPECIAL ARCHERY SEASON IN THE TETON-SPRING CREEK BIRD PRESERVE; AMENDING SECTIONS 87-5-401 AND 87-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-401, MCA, is amended to read:

"87-5-401. Creation of game preserves and general provisions. (1) There are game preserves within the state for the better protection of all the game animals and birds within their limits. Except as *otherwise* provided in this *part*, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission."

Section 2. Section 87-5-405, MCA, is amended to read:

"87-5-405. Teton-Spring Creek bird preserve — special archery season. *(1)* For the better protection and propagation of birds, the following described area in Teton County, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring Creek bird preserve: All of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15 in township 24 north, range 5 west.

(2) The department may open all or part of the Teton-Spring Creek bird preserve for a special archery season in accordance with 87-1-304 and 87-2-708."

Approved February 26, 1981.

CHAPTER NO. 19

AN ACT TO AMEND SECTION 6, CHAPTER 632, LAWS OF 1979, TO CORRECT AN INCORRECT REFERENCE; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 632, Laws of 1979, is amended to read:

"Section 6. **Effective date of sections 1 and 5.** Sections 1 and *5* are effective for fiscal years 1980 and 1981 only."

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Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 26, 1981.

CHAPTER NO. 20

AN ACT TO ALLOW DISCHARGE OF FIREARMS AT SHOOTING RANGES LOCATED IN TOWNS OR CITIES OR LOCATED IN PRIVATE DWELLINGS UNDER CERTAIN CONDITIONS; AND TO CLARIFY THAT IT IS OTHERWISE LAWFUL TO DISCHARGE A FIREARM IN TOWNS, CITIES, OR PRIVATE DWELLINGS IN CERTAIN INSTANCES; AMENDING SECTION 45-8-343, MCA; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-343, MCA, is amended to read:

"45-8-343. Firing firearms. *(1) Except as provided in subsections (2) and (3), every* person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 26, 1981.

CHAPTER NO. 21

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-118, 39-71-205, 39-71-308, 39-71-403, 39-71-701, 39-71-702, 39-71-725, 39-72-701, AND 39-72-706, MCA; AND REPEALING SECTIONS 50-75-101 THROUGH 50-75-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

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(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-302 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be *not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.*"

Section 2. Section 39-71-205, MCA, is amended to read:

"39-71-205. Division authorized to charge certain fees — disposition of. (1) The division shall have power and authority to charge and collect *a fee* for copies of papers and records, *including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the administrator.*

(2) The division shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

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(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the earmarked revenue fund and shall be accompanied by detailed statement thereof."

Section 3. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by division. Whenever any public corporation *insured by the state compensation insurance fund* neglects or refuses to file *prescribed* payroll *reports* of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of *$75* for each such assessment, which assessments shall be collected in the manner provided in this chapter for the collection of assessments."

Section 4. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations. (1) Where a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency shall be considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay such sums into the *state compensation insurance fund* at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (2) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 5. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for injuries producing temporary total disability. (1) Weekly compensation benefits for injury producing

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total temporary disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed $110 beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

(2) In cases where it is determined that periodic *disability* benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, *which amount is to be calculated from the date of the disability social security entitlement.*"

Section 6. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for injuries producing total permanent disability.** (1) Weekly compensation benefits for injury producing total permanent disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

(2) In cases where it is determined that periodic *disability* benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, *which amount is to be calculated from the date of the disability social security entitlement.*"

Section 7. Section 39-71-725, MCA, is amended to read:

"**39-71-725. Payment of burial expense.** There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding *$1,400*, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation."

Section 8. Section 39-72-701, MCA, is amended to read:

"**39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.** *(1)* The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

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(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement."

Section 9. Section 39-72-706, MCA, is amended to read:

"39-72-706. Aggravation. *(1)* Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) Where compensation is reduced a proportionate amount as in subsection (1) above and the worker receives disability social security benefits, the offset entitlement granted to the insurer shall be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

Section 10. **Repealer.** Sections 50-75-101 through 50-75-107, MCA, are repealed.

Approved February 26, 1981.

CHAPTER NO. 22

AN ACT TO PERMIT THE APPORTIONMENT OF HIGHWAY FUNDS BASED ON THE AMOUNT AVAILABLE FOR OBLIGATION AND TO CHANGE THE DATE WHEN INFORMATION CONCERNING ALLOCATIONS MUST BE FURNISHED TO THE COUNTY COMMISSIONERS; AMENDING SECTIONS 60-3-204, 60-3-206, 60-3-207, 60-3-208, 60-3-210, 60-3-211, 60-3-214, 60-3-225, AND 60-3-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-204, MCA, is amended to read:

"60-3-204. Apportionment of state construction funds. Each fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for *obligation* on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section, and this cost

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shall be credited to the accounts of the highway system, financial district, county, or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county, or urban city."

Section 2. Section 60-3-206, MCA, is amended to read:

"60-3-206. Apportionment of state funds to federal-aid secondary highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) one-fourth in the ratio of land area in each district to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each district to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each district to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, *obligations* in any county may exceed the amount apportioned to that county to the extent of three times the amount of the last apportionment to the county. The amount of any excess *obligations* shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) "Rural population" means total population less the population in cities over 5,000 persons and their unincorporated fringe urban areas as reported in the latest federal census. Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) "Rural road mileage" means all road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system. Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

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(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands if the actual value is not available."

Section 3. Section 60-3-207, MCA, is amended to read:

"60-3-207. Secondary highway information. On or before *November* 30 of each year, the department shall inform each board of county commissioners of:

(1) the total amount of secondary highway funds and the amount apportioned to each county;

(2) the location of proposed secondary highway projects, when the information is available;

(3) any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties."

Section 4. Section 60-3-208, MCA, is amended to read:

"60-3-208. Apportionment of state funds to federal-aid off-system roads. (1) Each fiscal year the department of highways shall apportion to each county available state construction funds for the purpose of matching federal-aid off-system road funds. Such apportionment shall be made in the same manner and on the same basis as provided in 60-3-206.

(2) The board of county commissioners shall, in proposing projects to be constructed with off-system road funds, consult with the governing body of those cities with a population under 5,000 persons located within the county.

(3) To permit orderly programming and construction of projects, *obligations* by a county may exceed the amount of off-system road funds available to that county by no more than 300%. The amount of the excess expenditures shall be deducted from the future off-system road funds available to that county."

Section 5. Section 60-3-210, MCA, is amended to read:

"60-3-210. Increases in obligations. (1) The department may increase the *obligations* made in a financial district to the extent of:

(a) 25% more than the amount of money allocated to the district in the latest year for the federal-aid primary system or the federal-aid secondary system;

(b) 300% more than the amount of money allocated to the district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to a district for the next succeeding fiscal year shall be decreased by an amount equal to any increased *obligations*."

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Section 6. Section 60-3-211, MCA, is amended to read:

"60-3-211. Apportionment of state funds to federal-aid urban highways. (1) Each fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over 5,000 population in the ratio of urban population in each city to the total urban population in all cities in the state over 5,000 population.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over 5,000 population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, *obligations* in any city may exceed the amount apportioned to that city. The amount of any excess *obligations* shall be deducted from future apportionments to that city."

Section 7. Section 60-3-214, MCA, is amended to read:

"60-3-214. Construction or reconstruction of bridges. (1) The department may allocate from state construction moneys available for the federal-aid highway system up to $1 million in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be *obligated to*:

(a) primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of $500,000;

(b) secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of 3 years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in 60-3-205 and for the secondary system before the apportionment in 60-3-206."

Section 8. Section 60-3-225, MCA, is amended to read:

"60-3-225. Excess obligations. To the extent necessary to permit orderly programming and construction of projects, *obligations* on any route may exceed the amount apportioned to that route. The amount of any such excess *obligations* shall be deducted from future apportionments to that route."

Section 9. Section 60-3-234, MCA, is amended to read:

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"60-3-234. Apportionment of funds. Each fiscal year the department shall apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles that need upgrading in all approved growth centers' area of influence.

(2) Thereafter, the allocation shall be in the ratio of the number of miles that need upgrading in existence on July 1 of a fiscal year on the primary, secondary, and urban systems in each approved growth center's area of influence to the total number of miles that need upgrading in all approved growth centers' area of influence.

(3) To the extent necessary to permit orderly programming and construction of projects, *obligations* in any approved growth center may exceed the amount apportioned to the growth center. The amount of any such excess *obligations* shall be deducted from future apportionments to that growth center."

Approved February 26, 1981.

CHAPTER NO. 23

AN ACT TO TERMINATE THE STATE AIRPLANE POOL, TO AUTHORIZE SALE OR TRANSFER OF CERTAIN AIRCRAFT AND HANGARS AND APPROPRIATIONS TO ALLOW TERMINATION; REPEALING SECTIONS 67-2-201 THROUGH 67-2-205, MCA, IN THEIR ENTIRETY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposal of airplanes, hangars, and cash balances.** The department of community affairs shall:

(1) convey to the department of fish, wildlife, and parks the special-use Cessna 180 airplane and two hangars, all of which were acquired under House Bill 921, Laws of 1979, for the consideration of $61,774, less depreciation since June, 1979, such funds to be deposited in the general fund;

(2) convey to the department of highways the hangar acquired under House Bill 921, Laws of 1979, for a consideration of $61,230, less depreciation since June, 1979, such funds to be deposited in the general fund;

(3) convey to the office of the governor the twin-engine, pressurized-cabin airplane known as the Duke;

(4) convey to the aeronautics division of the department of community affairs the Bonanza heretofore part of the state airplane pool, and $38,888 from the airplane capital replacement account;

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(5) convey to the department of natural resources the regular Cessna 180, serial number 18052167; and

(6) deposit all remaining cash from operations and capital replacement accounts into the general fund after airpool debts, excluding the loan to the aviation fuel tax earmarked revenue account, are paid.

Section 2. **Appropriating funds to repay the state airplane pool loan.** General fund of $158,039 is appropriated to repay the airpool loan from the aviation fuel tax earmarked revenue account of the aeronautics division within the department of community affairs.

Section 3. **Appropriating travel money to the governor's office.** General fund of $45,000 is appropriated to the governor's office to pay for maintenance, Duke loan payments, one pilot, and related travel costs of operating the Duke for the remainder of fiscal 1981.

Section 4. **Repealer.** Sections 67-2-201 through 67-2-205, MCA, are repealed.

Section 5. **Effective date.** This bill is effective on passage and approval.

Approved February 27, 1981.

CHAPTER NO. 24

AN ACT TO PROVIDE FOR AUDIT COSTS IN THE EXECUTIVE BUDGET RECOMMENDATIONS TO THE LEGISLATURE; REQUIRING TRANSFER OF FUNDS FOR AUDITS TO THE LEGISLATIVE AUDITOR; REQUIRING THAT CONTRACTS FOR AUDIT SERVICES BE APPROVED BY THE LEGISLATIVE AUDITOR; CREATING AN AUDIT ACCOUNT IN THE REVOLVING FUND AND PROVIDING FOR DEPOSIT AND EXPENDITURE OF MONEY THEREIN; AND PROVIDING FOR NOTATION OF AUDIT RECOMMENDATION IMPLEMENTATION COSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university system unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "University system unit" means the board of regents or its units.

(3) "Audit services" means financial compliance post audits as required by Title 5, chapter 13.

Section 2. **Audit costs.** Prior to July 1 of each even-numbered year, the legislative auditor shall advise each agency and the budget director of

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the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor. Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs. The legislative auditor shall bill agencies for audit services as he considers necessary. In no event may the legislative auditor bill an agency for audit services in excess of amounts appropriated for audit services. Additional audit related services may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency.

Section 3. **Legislative auditor to approve contracts for audit services.** No contract for an audit of a state agency may be entered into without the approval of the legislative auditor.

Section 4. **Audit revolving account — appropriation and expenditures.** All money for audits transferred to the legislative auditor as provided in [section 2] must be deposited in the revolving fund in the state treasury to the credit of the office of the legislative auditor. The money so deposited is hereby appropriated and may be expended by the legislative auditor to pay expenses incurred in auditing state agencies pursuant to an operational plan approved by the legislative audit committee.

Section 5. **Audit recommendation implementation costs.** Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of such costs in the appropriate audit report.

Approved March 2, 1981.

CHAPTER NO. 25

AN ACT TO ALLOW THE USE OF CERTAIN ANNUAL POPULATION ESTIMATES AS THE BASIS FOR DETERMINING RETAIL BEER LICENSE AND ALL-BEVERAGES LICENSE QUOTAS; AND TO ELIMINATE SPECIAL CENSUS PROVISIONS; AMENDING SECTIONS 16-4-105, 16-4-201, 16-4-204, AND 16-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved

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by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population *prescribed in 16-4-502* as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the

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corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 2. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population *prescribed in 16-4-502* as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

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(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 3. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

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(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census *prescribed in 16-4-502*;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 25% in the most recent census *prescribed in 16-4-502*; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of

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any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Section 4. Section 16-4-502, MCA, is amended to read:

"16-4-502. Census. The census taken under the direction of congress shall be the basis upon which the respective populations of the *counties and incorporated cities or towns* shall be determined. *However, in the interim between censuses, the department shall use as such basis the*

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most recent population estimates published by the bureau of the census, United States department of commerce."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 4, 1981.

CHAPTER NO. 26

AN ACT TO AMEND SECTION 2-15-1705, MCA; PROVIDING FOR REPLACEMENT OF A NEUTRAL MEMBER ON THE BOARD OF PERSONNEL APPEALS; PROVIDING FOR THE VOTE NECESSARY TO ADOPT A DECISION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of five members appointed by the governor. Two members shall represent management, two members shall represent employees or employee organizations of the state, and one member shall represent a neutral position.

(4) When the member representing a neutral position is unable to participate in a proceeding before the board, an equal number of management and labor members of the board shall select an individual, who shall be a neutral person, to serve in the place of the neutral member in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional neutral person appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of a least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 4, 1981.

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CHAPTER NO. 27

AN ACT TO REMOVE THE ANNUAL ELECTIONS OF FIRE DISTRICTS, HOSPITAL DISTRICTS, IRRIGATION DISTRICTS, AND DRAINAGE DISTRICTS FROM THE CONSOLIDATING PROVISIONS OF TITLE 13; TO PROVIDE THAT THE ELECTIONS FOR SUCH POLITICAL SUBDIVISIONS BE HELD ON SCHOOL ELECTION DAY, THE FIRST TUESDAY OF APRIL, EITHER IN COOPERATION WITH A SCHOOL DISTRICT OR AT ANOTHER CONVENIENT LOCATION WITHIN THE POLITICAL SUBDIVISION; TO PROVIDE FOR A MANNER OF CONDUCTING SUCH ELECTIONS, NAMING QUALIFIED ELECTORS, AND NOMINATING CANDIDATES FOR OFFICE; AMENDING SECTIONS 7-33-2106, 7-34-2116 THROUGH 7-34-2118, 13-1-104, 13-1-301, 13-1-302, 85-7-1702, 85-7-1710, 85-8-302, 85-8-304, AND 85-8-306, MCA; REPEALING SECTION 85-8-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in *subsection (3) of this section,* 13-1-104(3), *and [section 8].* The term of office shall be 3 years beginning *at* the first *district meeting* following their election or until their successors are elected and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election *including any holder of title to lands within the district who presents a proof of interest in such land at the polling place, regardless of whether he is registered to vote.*

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election day and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. This subsection does not prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

(4) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Section 2. Section 7-34-2116, MCA, is amended to read:

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"7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

(2) The trustees may be nominated and have their names appear upon the ballots as provided in *7-34-2117*."

Section 3. Section 7-34-2117, MCA, is amended to read:

"7-34-2117. Procedure for the conduct of election for trustees. (1) All elections of trustees following the election of the first board of trustees shall be conducted at the time *provided in 13-1-104(3)* and in the manner provided by *[section 8]*.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected."

Section 4. Section 7-34-2118, MCA, is amended to read:

"7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first *district meeting* following their election and until their respective successors shall be elected and qualified.

(2) Annually thereafter there may be elected a trustee to serve for a term of 3 years and until his successor shall be qualified. Such term of 3 years shall commence *at* the first *district meeting* following the said trustee's election."

Section 5. Section 13-1-104, MCA, is amended to read:

"13-1-104. Times for holding general elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county *and not required to hold annual elections*, and any other officers specified by law for election in odd-numbered years when the term for

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the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held *on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in [section 8].*"

Section 6. Section 13-1-301, MCA, is amended to read:

"13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of such political subdivision, as provided by [section 8]."

Section 7. Section 13-1-302, MCA, is amended to read:

"13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the primary and general elections regularly scheduled for even-numbered years shall be paid by the counties.

(2) Costs of the primary and general elections regularly scheduled for odd-numbered years shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(3) A political subdivision holding an annual election with a regularly scheduled *school* election shall bear its proportionate share of the costs as determined by the county *election administrator and the school district election administrator.*

(4) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(5) Costs of elections may not include the services of the election administrator or capital expenditures.

(6) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(7) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid."

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Section 8. **Manner of conducting general elections for political subdivisions required to hold annual elections.** (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1) or (2) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

Section 9. Section 85-7-1702, MCA, is amended to read:

"85-7-1702. Regular election — term of office. *(1) Candidates for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote.*

(2) The regular election for commissioners in each district shall be held annually in accordance with 13-1-104 and *[section 8].*

(3) Within 40 days following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the date of the organizational meeting after the regular election and shall continue for 3 years and until the election and qualification of his successor.

(4) Commissioners are elected by the electors of the entire district."

Section 10. Section 85-7-1710, MCA, is amended to read:

"85-7-1710. Qualification of electors and nature of voting rights. (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general *election* laws of the state, *except that no registration of electors may be required*;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district shall be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district, each elector is permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10."

Section 11. Section 85-8-302, MCA, is amended to read:

"85-8-302. Election of commissioners — regular term of office. (1) The regular election of commissioners shall be held annually in accordance with 13-1-104 *and [section 8].* The term of office of commissioners shall commence on the first *Tuesday* in *May* following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and which, on petition, have been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner. One of the commissioners, to be

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determined by lot, shall hold office until the first *Tuesday* in *May* in the year following his election; another of the commissioners, to be determined by lot, shall hold office until the first *Tuesday* in *May* in the second year following his election; and the third of the commissioners shall hold office until the first *Tuesday* in *May* in the third year following his election. Thereafter one commissioner shall be elected each year, who shall hold office for a term of 3 years and until his successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands is situated."

Section 12. Section 85-8-304, MCA, is amended to read:

"85-8-304. Results of election. The *secretary* of the board of *commissioners* shall enter the result of the election in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first *Tuesday* in *May* following, and the names of all of the persons who will compose the board of *commissioners* for the year next following the first *Tuesday* in *May*."

Section 13. Section 85-8-306, MCA, is amended to read:

"85-8-306. Nominations. Candidates for the office of commissioner to be filled by election may be nominated by petition filed with the *election administrator or deputy* election administrator *at least 30 days before the election* and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. *This section does not* prevent an elector from voting for any qualified person, although the name does not appear on the official ballot."

Section 14. **Transition of officers.** (1) If the effective date of this act is on or later than March 15, 1981, then any officer of a hospital, fire, irrigation, or drainage district whose term was due to expire following the November 1981 election of his successor is entitled to remain in office until his successor is properly qualified following an election held in April 1982.

(2) If the effective date is before March 15, 1981, then an election of officers may be held on school election day in April, 1981. However, the officers of the district may decide that the best interests of the district would not be served by giving such short notice for an election and may follow the procedure in subsection (1).

Section 15. **Repealer.** Section 85-8-303, MCA, is repealed.

Section 16. **Effective date.** This act is effective on passage and approval.

Approved March 5, 1981.

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CHAPTER NO. 28

AN ACT TO RENAME AND DEFINE TREASURY FUNDS TO BE IN ACCORDANCE WITH CURRENT AUTHORITATIVE LITERATURE AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REMOVING THE SUNSET PROVISION ON THE UNIVERSITY FUNDS; AMENDING SECTIONS 17-2-101 THROUGH 17-2-103 AND 17-2-107, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-101, MCA, is amended to read:

"17-2-101. Title and purpose. Sections 17-2-101 through 17-2-107 may be cited as the "Treasury Fund Structure Act". The purpose of these sections is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect *the state's* revenues, *expenditures, expenses, and financial position in accordance with generally accepted accounting principles.*"

Section 2. Section 17-2-102, MCA, is amended to read:

"17-2-102. Fund structure. *(1)* There are in the state treasury only the following funds:

(a) governmental funds, which include:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue funds, which account for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes;

(iii) the capital projects funds, which account for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service funds, which account for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary funds, which include:

(i) the enterprise funds, which account for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for

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capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service funds, which account for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary funds, which include trust and agency funds used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include:

(i) expendable trust funds;

(ii) nonexpendable trust funds;

(iii) pension trust funds; and

(iv) agency funds.

(d) the university funds, which include:

(i) the university current fund, *which accounts for* moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the university student loan fund, *which accounts for* moneys deposited in the state treasury which may be loaned to students, faculty, or staff

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for purposes related to education, organized research, or public services by the Montana university system;

(iii) the university endowment fund, *which accounts for* moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the university annuity and life income fund, *which accounts for* moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the university plant fund, *which accounts for* those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; *and*

(vi) the university agency fund, *which accounts for* moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section."

Section 3. Section 17-2-103, MCA, is amended to read:

"**17-2-103. Previous definitions of funds — future provisions for segregation of moneys.** (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds which are inconsistent with the definitions found in this part.

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of moneys in the state treasury by means of a separate treasury fund shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by 17-2-102."

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Section 4. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(3) Any loan from the general fund or the university current unrestricted subfund to funds designated in subsections *(1)(d)(i)(D)* and *(1)(d)(ii)* through *(1)(d)(vi)* of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(4) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)*(a)* through *(1)(c)* of 17-2-102.

(b) Units of the university system must maintain positive cash balances in the subfunds provided in subsections *(1)(d)(i)(A)* through *(1)(d)(i)(D)* and *(1)(d)(ii)* through *(1)(d)(vi)* of 17-2-102."

Section 5. **Department of administration to prepare legislation.** The department of administration shall prepare legislation for introduction in the 48th legislature that will appropriately amend all references in the Montana Code Annotated to 17-2-101 and 17-2-102, and the treasury funds mentioned therein prior to the effective date of section 1 of this act in order to correlate such references with this act.

Section 6. **Effective dates.** Sections 3 and 5 of this act are effective on passage and approval. Sections 1, 2, and 4 are effective on July 1, 1983.

Approved March 4, 1981.

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CHAPTER NO. 29

AN ACT CHANGING THE NAMES OF FUNDS APPROPRIATED AND DISBURSED FROM THE TREASURY; AMENDING SECTION 17-8-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, *the special revenue fund, the enterprise fund, the internal service fund, and the capital projects fund*, with the exception of refunds authorized in subsection *(3)*, shall be paid out of the treasury only on appropriation made by law.

(2) Moneys deposited in the *debt service fund and the trust and agency fund* may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration."

Section 2. **Effective date.** This act is effective on July 1, 1983.

Approved March 4, 1981.

CHAPTER NO. 30

AN ACT TO AMEND SECTION 85-2-306, MCA, TO PROVIDE THAT THE EXEMPTION FOR A STOCK WATERING PIT OF LESS THAN 15 ACRE-FEET APPLIES ONLY IF THE PARCEL ON WHICH THE IMPOUNDMENT IS TO BE CONSTRUCTED IS 40 ACRES IN SIZE OR LARGER; AND TO PROVIDE RETROACTIVE APPLICATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall automatically issue

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a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet, the appropriation is from a source other than a perennial flowing stream, *and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.* As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(3) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 2. **Application.** This act applies to applications pending with the department on the effective date of this act, as well as applications filed with the department after the effective date of this act.

Approved March 11, 1981.

CHAPTER NO. 31

AN ACT TO PROVIDE THAT FINES, FEES, AND PENALTIES PAID TO THE DEPARTMENT OF STATE LANDS UNDER THE STRIP AND UNDERGROUND MINE SITING ACT AND THE STRIP AND UNDERGROUND MINE RECLAMATION ACT ARE CREDITED TO THE GENERAL FUND; AMENDING SECTIONS 82-4-113, 82-4-240, AND 82-4-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-113, MCA, is amended to read:

"82-4-113. Receipts paid into special fund — use of fund. *Except for bond forfeiture moneys, all* fees, *penalties,* and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to *the general fund.*"

Section 2. Section 82-4-240, MCA, is amended to read:

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"82-4-240. Reclamation of lands after bond forfeited. In keeping with the provisions of this part, the board may reclaim any affected lands with respect to which a bond has been forfeited."

Section 3. Section 82-4-241, MCA, is amended to read:

"82-4-241. Receipts paid into special fund — use of fund. *Except for bond forfeiture moneys, all* fees, *penalties*, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to *the general fund.*"

Approved March 11, 1981.

CHAPTER NO. 32

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO PUBLICIZE THE SPECIAL PARKING PERMIT PROVISIONS FOR HANDICAPPED PERSONS AND TO BUDGET FOR SUCH ADVERTISING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Division to publicize permit.** (1) The division of motor vehicles shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The division of motor vehicles shall budget sufficient funds to accomplish the requirements of subsection (1).

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 49, chapter 4, part 3, and the provisions of Title 49, chapter 4, part 3, apply to section 1.

Approved March 11, 1981.

CHAPTER NO. 33

AN ACT TO EXEMPT AGENTS FOR PROFESSIONAL ATHLETES FROM THE PROVISIONS GOVERNING EMPLOYMENT AGENCIES; AMENDING SECTION 39-5-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is

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derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, *agents for professional athletes,* or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" means the commissioner of the department of labor and industry.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(8) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes."

Approved March 11, 1981.

CHAPTER NO. 34

AN ACT TO AMEND SECTION 76-16-106, MCA, TO INCREASE THE FEE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY IMPOSE AGAINST THE STATE GRAZING DISTRICTS FROM 10 CENTS PER ANIMAL UNIT TO 15 CENTS PER ANIMAL UNIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-16-106, MCA, is amended to read:

"76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of *15* cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the earmarked revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Approved March 11, 1981.

CHAPTER NO. 35

AN ACT TO PERMIT THE DEPOSIT OF PROCEEDS RECEIVED BY THE DEPARTMENT OF HIGHWAYS FROM SALES OF PERSONAL PROPERTY IN A REVOLVING FUND ACCOUNT; AMENDING SECTION 18-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-6-103, MCA, is amended to read:

"18-6-103. Highway equipment by bid. All sales of highway equipment shall be by public auction or sealed bids, and all proceeds received by the department from the sale of all material, supplies, equipment, and all other personal property of the department of highways shall be placed in the highway account of the earmarked revenue fund *or in the appropriate revolving fund account.*"

Approved March 11, 1981.

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CHAPTER NO. 36

AN ACT TO AMEND THE DEFINITION OF TERMS IN THE PROPORTIONAL VEHICLE REGISTRATION LAW; TO CLARIFY THE PROVISIONS PERTAINING TO FEES AND CREDITS; AND TO CLARIFY THE PENALTY PROVISIONS FOR VIOLATIONS OF THE STATUTES AND AGREEMENTS ENTERED INTO WITH OTHER JURISDICTIONS; AMENDING SECTIONS 61-3-712, 61-3-721, 61-3-725, AND 61-3-730, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-712, MCA, is amended to read:

"61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) "*Apportionable* vehicle" means a vehicle which is *used or intended for use* in more than one *jurisdiction* and used for the transportation of persons for hire, compensation, or profit, or designed or used primarily for the transportation of property.

(2) "Fleet" means *one* or more *apportionable* vehicles.

(3) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) "Legal residence" means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in 61-3-711 through 61-3-733 shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) "Preceding year" means a period of 12 consecutive months fixed by the department of highways, which period shall be within 16 months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

(6) (a) "Properly registered", as applied to place of registration, means:

(i) the jurisdiction where the person registering the vehicle has his legal residence;

(ii) in the case of *an apportionable* vehicle, the jurisdiction in which it is registered if the enterprise in which the vehicle is used has a place of business therein and if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the vehicle has been assigned to the place of business; or

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(iii) in the case of *an apportionable* vehicle, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the highway commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected."

Section 2. Section 61-3-721, MCA, is amended to read:

"61-3-721. Proportional registration of fleet vehicles, application, fee formula, and payment. (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the following information and any other information pertinent to vehicle registration the department requires:

(a) total fleet miles which is the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year;

(b) in-state miles which is the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year; and

(c) a description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet may be accompanied by a fee payment computed as follows:

(a) divide in-state miles by total fleet miles;

(b) determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and part 2 of chapter 10, and the property taxes which are due on the fleet;

(c) multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees *may* be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due."

Section 3. Section 61-3-725, MCA, is amended to read:

"61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the

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fleet shall notify the department of highways of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for *additional fees due* during the registration year or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund."

Section 4. Section 61-3-730, MCA, is amended to read:

"61-3-730. Suspension of reciprocity benefits. *The* department *may* suspend or cancel the exemptions, benefits, or privileges granted *under 61-3-711 through 61-3-733* to a person who violates any of the conditions or terms of the agreements, arrangements, or declarations or violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder."

Approved March 11, 1981.

CHAPTER NO. 37

AN ACT TO AMEND SECTION 61-8-202, MCA, TO CLARIFY WHICH TRAFFIC CONTROL MANUAL THE DEPARTMENT OF HIGHWAYS SHALL ADOPT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-202, MCA, is amended to read:

"61-8-202. Department of highways to adopt sign manual. The department of highways shall adopt a manual for a uniform system of traffic-control devices consistent with this chapter for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the *manual on uniform traffic control devices, as amended.*"

Approved March 11, 1981.

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CHAPTER NO. 38

AN ACT TO PERMIT THE DEPARTMENT OF HIGHWAYS TO ALLOCATE STATE CONSTRUCTION MONEY FOR THE CONSTRUCTION OF A BRIDGE OUTSIDE OF MONTANA IF MORE ECONOMICAL THAN WITHIN THE STATE AND IF ANOTHER STATE PARTICIPATES IN THE FUNDING; AMENDING SECTION 60-3-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-214, MCA, is amended to read:

"60-3-214. Construction or reconstruction of bridges. (1) The department may allocate from state construction moneys available for the federal-aid highway system up to $1 million in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) on primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of $500,000;

(b) on secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of 3 years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in 60-3-205 and for the secondary system before the apportionment in 60-3-206.

(4) The department may allocate from state construction money available for the federal-aid highway system money to construct a bridge located outside the boundaries of Montana if it determines, after an economic analysis of the cost of construction and maintenance of the bridge and the roads that adjoin it, that it is more economical to construct the bridge at such location than at a location within the boundaries of Montana and if another state participates in the funding of the project."

Approved March 11, 1981.

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CHAPTER NO. 39

AN ACT TO DELETE THE PROVISIONS FOR TRUCK AND TRAILER DEMONSTRATION PERMITS AND TO CLARIFY THE EXEMPTION FOR VEHICLES DISPLAYING A LICENSED DEALER'S PLATE; AMENDING SECTIONS 61-3-431, 61-3-432, 61-10-214, 61-10-231, AND 61-12-206, MCA; AND REPEALING SECTIONS 61-4-114 THROUGH 61-4-118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104(2) and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section."

Section 2. Section 61-3-432, MCA, is amended to read:

"61-3-432. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this chapter, 61-4-101 through *61-4-106*, chapter 6, part 2 of chapter 10, or part 4 of chapter 12."

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Section 3. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from this part when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only *or* while being demonstrated in the course of the dealer's business, *for a period not to exceed 7 days. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer.*"

Section 4. Section 61-10-231, MCA, is amended to read:

"61-10-231. Enforcement. The highway patrol and any designated employee of the department of highways shall enforce this part *and* 61-3-502(1) and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part *and* 61-3-502(1), to ascertain whether or not those laws are being complied with."

Section 5. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) sections 15-70-302 through 15-70-307;

(e) sections 15-70-311 through 15-70-314;

(f) section 61-3-502(1);

(g) sections 61-10-201 through 61-10-215;

(h) sections 61-10-222 through 61-10-224;

(i) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section."

Section 6. **Repealer.** Sections 61-4-114 through 61-4-118, MCA, are repealed.

Approved March 11, 1981.

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CHAPTER NO. 40

AN ACT TO INCREASE THE MAXIMUM GROSS VEHICLE WEIGHT AND LENGTH ALLOWED WITHOUT SPECIAL PERMIT; TO INCREASE THE FEES CHARGED FOR CERTAIN OVERWEIGHT AND OVERSIZE PERMITS; TO CLARIFY THE PROVISIONS REGARDING OPERATION WITHOUT SPECIAL PERMITS; AND TO INCREASE THE FEE CHARGED FOR TEMPORARY FUEL PERMITS; AMENDING SECTIONS 15-70-312, 61-10-104, 61-10-107, 61-10-109, 61-10-124, 61-10-125, AND 61-10-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits — duration of temporary permits. (1) The temporary special fuel permits shall cost the special fuel vehicle user a fee of *$30.* The permit shall be valid for a period of time not to exceed 72 hours and will be automatically void should the vehicle leave the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost $30 per unit for a period beginning July 1 and ending October 31. The permit shall not be transferable. A unit shall be defined as:

(a) one truck suitable for hauling produce;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected shall be remitted to the department or deposited directly in the earmarked revenue fund for the department of highways."

Section 2. Section 61-10-104, MCA, is amended to read:

"61-10-104. Length. (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

(2) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full-trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel may not have an overall length, inclusive of front and rear bumpers, in excess of *65* feet. If the combination consists of more than two units, the rear units of the combination shall be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than two motor vehicles attached to it by the dual saddle-mount method; that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of *65* feet.

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(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of *65* feet."

Section 3. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross weight — when permit required. (1) *An axle may not carry a load in excess of* 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart *may* carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. *A vehicle or combination may not have more than nine axles.* The maximum gross weight allowed on a vehicle or combination so authorized by this *section* shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet, and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

(2) *If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify highway routing.*

(3) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 4. Section 61-10-109, MCA, is amended to read:

"61-10-109. Operation without special permits prohibited. The operation of vehicles or combinations of vehicles having *dimensions or* weights in excess of the maximum limits specified in *61-10-101 through 61-10-108* is permitted only if authorized by special permit issued by the department of highways or its agents or the highway patrol."

Section 5. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee. (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle

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weight fees, a fee of *$10* for each *trip* permit *and a fee of $75 for each term permit* issued *for size and weight* in excess of *that* specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 85 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Section 6. Section 61-10-125, MCA, is amended to read:

"61-10-125. Other fees. In addition to the permit fee, there shall be charged for single trip permits, for the excess load over the gross allowable load or the sum of the excess axle loads, whichever is greater:

(1) *$10* for distances to and including 100 miles;

(2) *$30* for distances from 101 to 199 miles; and

(3) *$50* for distances over 200 miles traveled."

Section 7. Section 61-10-211, MCA, is amended to read:

"61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motortruck, truck tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck tractor, semitrailer, or trailer totals more than 6,000 pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

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(a) *$10* for each trip of 200 miles or less;

(b) *$15* for each trip of over 200 miles to 400 miles;

(c) *$20* for each trip of over 400 miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association."

Approved March 11, 1981.

CHAPTER NO. 41

AN ACT TO EXEMPT CERTAIN PENSIONS FROM THE REDUCTION REQUIREMENTS WHICH APPLY TO CLAIMANTS OF UNEMPLOYMENT INSURANCE AND TO INCLUDE SOCIAL SECURITY BENEFITS WITHIN THE REDUCTION REQUIREMENT; AND TO GRANT RULEMAKING AUTHORITY TO THE EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT MINIMUM FEDERAL OFFSET REQUIREMENTS; AMENDING SECTION 39-51-2203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. Reduction of benefits because of amounts received from certain other sources. *(1)* Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. *If a claimant is receiving payments under the federal Social Security Act or the federal Railroad Retirement Act or from a pension to which he has contributed in part, his weekly benefit amount must be reduced by 50% of the amount that he is receiving from such payments.*

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the division shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as

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amended in 1980 by P.L. 96-364, and as may be amended after [the effective date of this act]."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 11, 1981.

CHAPTER NO. 42

AN ACT TO PROVIDE THAT THE COUNTY SHERIFF IS THE LEGAL OFFICER IN CHARGE OF THE OPERATIONS OF SEARCH AND RESCUE UNITS; AMENDING SECTION 7-32-2121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2121, MCA, is amended to read:

"**7-32-2121. Duties of sheriff.** The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law."

Section 2. **Search and rescue units under control of county sheriff.** Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff having jurisdiction.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 7, chapter 32, part 2, and the provisions of Title 7, chapter 32, part 2, apply to section 2.

Approved March 11, 1981.

CHAPTER NO. 43

AN ACT TO REVISE THE PROCEDURE FOR DECLARING AN OFFICE FORFEITED BY REASON OF CASH SHORTAGE FOUND IN AN AUDIT BY THE DEPARTMENT OF COMMUNITY AFFAIRS; AMENDING SECTION 2-7-511, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-511, MCA, is amended to read:

"2-7-511. Access to public accounts — suspension of officer in case of discrepancy. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If an officer of any county, city, town, school, or other governmental entity referred to in this part refuses to accord the department access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the department finds a shortage of cash, the department shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the governmental entity.

(3) Upon filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office and the governing body of such governmental entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the department, if a shortage of cash existed in the accounts of the officer, the department shall file with the governing body of the governmental entity a final report of the audit, showing the shortage. *The governing body shall, within 10 days after the filing of the department's final report of the audit, set a date and time for a formal hearing to test the accuracy of the final report of the audit and give notice of the hearing to the officer.*

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(5) *If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit shall be referred to the county attorney.*"

Approved March 11, 1981.

CHAPTER NO. 44

AN ACT TO SHIFT THE BURDEN OF PROOF FOR SUPPRESSION OF CONFESSIONS OR ADMISSIONS IN CRIMINAL CASES; AMENDING SECTION 46-13-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-13-301, MCA, is amended to read:

"**46-13-301. Motion to suppress confession or admission.** (1) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary. The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made, the court shall conduct a hearing into the merits of the motion. *The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.*

(5) The issue of the admissibility of the confession or admission *may* not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(6) If the motion is granted, the confession or admission *is* not admissible in evidence against the movant at the trial of the case."

Approved March 11, 1981.

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CHAPTER NO. 45

AN ACT TO ALLOW TRUSTEES OF A SCHOOL DISTRICT TO DIRECT THE COUNTY TREASURER TO INVEST SCHOOL DISTRICT MONEY IN DIRECT OBLIGATIONS OF THE UNITED STATES GOVERNMENT IF SUCH AN INVESTMENT WOULD BE ADVANTAGEOUS TO THE DISTRICT; AMENDING SECTION 20-9-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-213, MCA, is amended to read:

"20-9-213. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in *direct obligations of the United States government, payable within 180 days from the time of investment, or in* savings or time deposits in a state or national bank, building or loan association, or savings and loan association insured by the FDIC or the FSLIC located in the county in which the district is located; provided, however, that if no such bank, building and loan association, or savings and loan association is located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

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(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Approved March 11, 1981.

CHAPTER NO. 46

AN ACT TO INCREASE THE COMPENSATION OF THE MEMBERS OF THE BOARD OF DIRECTORS OF COUNTY WATER AND SEWER DISTRICTS; AMENDING SECTION 7-13-2273, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2273, MCA, is amended to read:

"7-13-2273. Compensation of members of board. Each of the members of the board of directors shall receive *a monthly salary that may not exceed the following amounts:*

(1) $60 in districts with a population of no more than 500 persons;

(2) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(3) $100 in districts with a population of more than 5,000 persons."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 11, 1981.

CHAPTER NO. 47

AN ACT REQUIRING THAT A DISABILITY BE SUPPORTED BY A PREPONDERANCE OF MEDICAL EVIDENCE; DEFINING IMPAIRMENT AND DISABILITY; AMENDING SECTION 39-71-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

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(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

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(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. *Disability shall be supported by a preponderance of medical evidence.*

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. *Disability shall be supported by a preponderance of medical evidence.*

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. *Disability shall be supported by a preponderance of medical evidence.*

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

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(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 2. **Disability defined.** A worker is disabled when his ability to engage in gainful employment is diminished as a result of impairment, which in turn may be combined with such factors as the worker's physical condition, age, education, work history, and other factors affecting the worker's ability to engage in gainful employment. Disability is not a purely medical condition. Disability may be temporary total, permanent total, or permanent partial as defined in 39-71-116.

Section 3. **Impairment defined.** Impairment means any anatomic or functional abnormality or loss of bodily function. Impairment refers to functional use of the body and is a purely medical condition. Permanent impairment is any anatomic or functional abnormality or loss of bodily function after the maximum medical rehabilitation has been achieved. The anatomic or functional abnormality or loss must be considered stable by the physician at the time the impairment rating evaluation is made. An impairment rating is purely a medical determination. Impairment may or may not result in disability.

Approved March 11, 1981.

CHAPTER NO. 48

AN ACT TO AMEND SECTION 61-10-226, MCA, TO REQUIRE MONEY RECEIVED BY THE DEPARTMENT OF HIGHWAYS FROM THE COUNTIES TO BE DEPOSITED IN THE EARMARKED REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-226, MCA, is amended to read:

"61-10-226. Deposit of state highway money. (1) Any reference to the state highway fund means the state highway account in the earmarked revenue fund.

(2) Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the department.

(3) Money received from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the department.

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(4) Money collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

(5) Money received from the counties shall be deposited in the earmarked revenue fund to the credit of the department."

Approved March 11, 1981.

CHAPTER NO. 49

AN ACT AMENDING SECTION 1-1-502, MCA, TO REQUIRE THE STATE FLAG OF MONTANA TO BEAR THE WORD "MONTANA".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-502, MCA, is amended to read:

"**1-1-502. State flag.** There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V."*; and above the great seal of the state shall be the word "MONTANA" in Roman letters of gold color equal in height to one-tenth of the total vertical measurement of the blue field.*"

Approved March 11, 1981.

CHAPTER NO. 50

AN ACT PROVIDING FOR THE AGREEMENT BY THE STATE OF MONTANA TO FORMATION OF AND PARTICIPATION IN THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL; PROVIDING FOR THE APPOINTMENT OF MEMBERS TO THE COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Agreement to pacific northwest electric power and conservation planning council.** The state of Montana agrees through [this act] and through the appointment of persons as provided in [this act] to formation of and participation in the pacific northwest electric power and conservation planning council, hereafter referred to in [this act] as "the council", and to the performance of the functions and duties of the council as provided in the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501).

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Section 2. **Appointment of council members by governor.** (1) The governor shall appoint at the beginning of each gubernatorial term two persons to serve as members of the council as provided in P.L. 96-501.

(2) An appointment of a council member by the governor is subject to the confirmation of the senate, except that the governor may appoint a council member to assume office before the senate meets in its next regular session to consider the appointment. A member so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall make a new appointment.

(3) A council member serves at the pleasure of the governor. The governor may remove a council member at any time and appoint a new member to the office.

(4) If a vacancy occurs in the office of a council member, the governor shall appoint, as soon as reasonably possible, a new member to serve at the pleasure of the governor.

(5) The governor shall appoint the initial members within 30 days of [the effective date of this act].

Section 3. **Duties of council members.** The council members shall:

(1) undertake the functions and duties prescribed by P.L. 96-501 and in applicable state law;

(2) serve on a full- or part-time basis as determined by the governor; and

(3) submit to the governor and legislature an annual report detailing its expenditures, activities, and plans.

Section 4. **Compensation of council members.** Each member shall receive compensation to be determined by the governor, in consultation with the governors of the participating states, and according to applicable federal law.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 12, 1981.

CHAPTER NO. 51

AN ACT TO ELIMINATE EXEMPTIONS FROM JURY SERVICE AND CLARIFY WHEN A JUROR MAY BE EXCUSED; AMENDING SECTIONS 3-15-312, 3-15-313, 3-15-505, 3-15-507, 46-16-301, AND 46-16-304, MCA; AND REPEALING SECTIONS 3-15-311 AND 3-15-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases:

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(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person *should be excused under 3-15-313 or 3-15-507.*"

Section 2. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused — affidavit to claim excuse. *(1) The court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.*

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the clerk of the court for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the clerk of the court who shall transmit it to the court. The court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507."

Section 3. Section 3-15-505, MCA, is amended to read:

"3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an affidavit claiming *an excuse as provided for in 3-15-313.* If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice."

Section 4. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare capsules. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of *prospective* jurors summoned. *The court shall excuse any person satisfying the requirements of 3-15-313(1).*

(2) The clerk shall write the names of the jurors present and not excused on separate ballots, fold the ballots so that the names are concealed, and place them in black capsules. In the presence of the court, the clerk shall deposit the capsules containing the ballots in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the judge drawing the capsules from the box is unable to see the capsules he is about to draw. The box must be kept sealed or locked until ordered by the court to be opened."

Section 5. Section 46-16-301, MCA, is amended to read:

"46-16-301. Formation of trial jury. (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least 12 plus the total number of peremptory challenges.

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(2) The qualifications of jurors and *excuses* from jury duty are prescribed in Title 3, chapter 15, part 3."

Section 6. Section 46-16-304, MCA, is amended to read:

"46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An *excuse* from service on a jury is not a cause of challenge but the privilege of the person *excused*."

Section 7. **Repealer.** Sections 3-15-311 and 3-15-314, MCA, are repealed.

Approved March 16, 1981.

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CHAPTER NO. 52

AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION, INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705, 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006, 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND REPEALING SECTION 72-3-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation of succession. (1) A person or his personal representative *or the representative of an incapacitated or protected person* who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or *appointee under* a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the *right of* succession to any property or interest therein, *including a future interest,* by filing a written *renunciation under this section.* The instrument shall:

(a) describe the property or interest renounced;

(b) be signed by the person renouncing; and

(c) declare the renunciation and the extent thereof.

(2) *(a) An instrument renouncing a present interest shall* be filed within *9* months after the death of the decedent or the donee of the power.

(b) An instrument renouncing a future interest may be filed not later than *9* months after the event *determining that* the taker *of the property* or interest is finally ascertained *and his interest is indefeasibly vested.*

(c) The *renunciation* must be filed in the court of the county *in which* proceedings *have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be* commenced. A copy of the *renunciation* shall be *delivered in person or* mailed *by registered or certified mail* to *any* personal representative *or other fiduciary* of the decedent *or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk of the county in which the real estate is situated.*

(3) Unless the decedent or donee of the power has otherwise *provided,* the *property or* interest renounced *devolves* as *though* the person renouncing had predeceased the decedent or, if the appointment *was* exercised by

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a testamentary instrument, as *though* the person renouncing had predeceased the donee of the power. *A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. A* renunciation relates back for all purposes to the date of *the* death of the decedent or the donee *of the power.*

(4) *(a) The right to renounce property or an interest therein is barred by:*

(i) an assignment, conveyance, encumbrance, pledge, or transfer of property *or interest,* or *a* contract therefor*;*

(ii) a written waiver of the right to renounce*;*

(iii) an acceptance of *the* property *or interest or benefit thereunder;* or

(iv) a sale of *the* property *or interest under* judicial *sale* made before the *renunciation is effected.*

(b) The right to renounce exists *notwithstanding* any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(5) This section does not abridge the right of *a* person to *waive,* release, *disclaim,* or renounce property *or an interest therein* under any other statute.

(6) An interest in property which exists on July 1, 1975, *as to which, if a present interest, the time for filing a renunciation under the Uniform Probate Code has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within 9 months after July 1, 1975."*

Section 2. Section 72-2-203, MCA, is amended to read:

"72-2-203. Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under 72-2-202, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the brothers and sisters and the children or grandchildren of any deceased brother or sister, by representation;

(4) if there is no surviving issue, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin in equal

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degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote."

Section 3. Section 72-2-213, MCA, is amended to read:

"72-2-213. Establishment of parent-child relationship. If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person *is* the child of an adopting parent *and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.*

(2) In cases not covered by *subsection* (1), a person *is the child of its parents regardless of the marital status of its parents, and the parent and child relationship may be established under the Uniform Parentage Act, Title 40, chapter 6, part 1.*"

Section 4. **Persons related to decedent through two lines.** A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

Section 5. Section 72-2-304, MCA, is amended to read:

"72-2-304. Self-proved will. *(1) Any will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:*

I, ..., the testator, sign my name to this instrument this ..... day of ....., 19...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

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.....
Witness

.....
Witness

THE STATE OF .....
COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of .....

(SEAL) *(Signed)* .....

(Official capacity of officer)
.....

(2) An attested will may at any *time* subsequent *to its execution* be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of *the* state *where the acknowledgment occurs* and evidenced by the officer's cerificate, under *the* official seal, attached or annexed to the will in substantially *the following form*:

THE STATE OF .....
COUNTY OF .....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

.....Testator

.....Witness

.....Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this .... day of ...., ...

(SEAL) (Signed).....

(Official capacity of officer)
....."

Section 6. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred *to anyone other than a bona fide purchaser* by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made *to a donee* within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of accounts payable after the decedent's death

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under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, *any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death,* and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. *Income* earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser."

Section 7. Section 72-2-706, MCA, is amended to read:

"72-2-706. Charging spouse with property received — liability of others for balance of elective share. (1) In the proceeding for an elective share, *values included in* the augmented estate which *pass* or *have* passed to the surviving spouse, *or which would have passed to the spouse but were renounced, are* applied first to satisfy the elective share and to reduce *any contributions* due from other recipients of *transfers included in* the augmented estate. *For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.*

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from or appointees of the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate."

Section 8. Section 72-2-707, MCA, is amended to read:

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"72-2-707. Procedure for making of election. (1) The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within *9* months after the date of death *or within 6 months after the probate of the decedent's will,* whichever limitation *last* expires. *However, the nonprobate transfers described in 72-2-705(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than 9 months after death.* The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under 72-2-706. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 9. Section 72-3-907, MCA, is amended to read:

"72-3-907. Purchases from distributees protected. If property distributed in kind or a security interest therein is acquired *for value* by a purchaser *from* or lender *to* a distributee who has received an instrument or deed of distribution from the personal representative, *or is so acquired by a purchaser from or lender to a transferee from such distributee,* the purchaser or lender takes title free of *rights of* any *interested person in the estate* and incurs no personal liability to the estate *or to any interested person,* whether or not the distribution was proper *or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.*

This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender

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need not inquire whether a personal representative acted properly in making the distribution in kind, *even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section shall be prima facie evidence that such transfer was made for value.*

For purposes of this section, the term purchaser includes any lessee or other person acquiring any interest in the property for value."

Section 10. Section 72-3-1005, MCA, is amended to read:

"72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole *residual* beneficiary of the estate, no accounting need be made."

Section 11. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been filed with the clerk:

(a) a certificate from the department of revenue *stating that any inheritance tax due on the assets of the estate has been paid; or*

(b) an agreement with the department of revenue for extension of time for payment of inheritance taxes; or

(c) a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid.

(2) This section shall not prohibit such partial distribution as may become necessary in the course of administration."

Section 12. Section 72-4-201, MCA, is amended to read:

"72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative *submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:*

(a) filing authenticated copies of his appointment as provided in [section 16];

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(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual.

(2) Jurisdiction *under subsection (1)(b)* is limited to the money or value of personal property collected."

Section 13. Section 72-4-301, MCA, is amended to read:

"72-4-301. Powers of foreign representative generally. *A* domiciliary foreign personal representative who has complied with *[section 16]* may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally."

Section 14. Section 72-4-306, MCA, is amended to read:

"72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with *proof of his appointment and an affidavit made by or on behalf of the representative, stating:*

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery."

Section 15. Section 72-4-308, MCA, is amended to read:

"72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice. Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative."

Section 16. **Proof of authority — bond.** If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

Section 17. **Codification instruction.** (1) Sections 4 and 16 are intended to be codified as an integral part of Title 72, chapters 1 through

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5 and chapter 16, part 6. The provisions of Title 72, chapters 1 through 5 and chapter 16, part 6, apply to sections 4 and 16.

(2) The code commissioner is instructed to codify section 16 and to renumber Title 72, chapter 4, part 3, in such a way that the sections of Title 72, chapter 4, part 3, are in the same numerical order as the corresponding sections of the Uniform Probate Code, 1977 edition, as promulgated by the national conference of commissioners on uniform state laws.

Section 18. **Repealer.** Section 72-3-608, MCA, is repealed.

Approved March 16, 1981.

CHAPTER NO. 53

AN ACT TO REVISE THE RATE OF INTEREST ON BONDS AND NOTES ISSUED BY THE BOARD OF HOUSING; AMENDING SECTION 90-6-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a

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rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any one time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed $375 million. The rate of interest on bonds or notes issued by the board may not exceed *an interest rate equal to 1% less than the interest rate established from time to time by the U.S. department of housing and urban development (HUD), federal housing administration (FHA). The interest rate shall be determined for each issue of bonds or notes according to the HUD/FHA rate in effect 30 days prior to the sale of the bonds or notes.*"

Section 2. **Saving clause.** Nothing in this act affects or impairs any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1981.

CHAPTER NO. 54

AN ACT TO ALLOCATE TO THE BOARD OF HOUSING THE AMOUNT OF QUALIFIED MORTGAGE BONDS ISSUED PURSUANT TO SECTION 103A OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED; DESIGNATING AREAS OF CHRONIC ECONOMIC DISTRESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Allocation of state limit.** (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with Section 103A(g) of the Internal Revenue Code of 1954, as amended is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of Section 103A(g) of the Internal Revenue Code of 1954, as amended.

Section 2. **Saving clause.** Nothing in [section 1] affects or impairs any provision of resolution indentures, loans, contracts, bonds, or notes adopted, entered into or issued before [the effective date of this act].

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1981.

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CHAPTER NO. 55

AN ACT TO PROVIDE VOCATIONAL TRAINING TO THE DISABLED AND THE BLIND AFTER A FINANCIAL NEEDS DETERMINATION HAS BEEN MADE; AMENDING SECTIONS 53-7-105 AND 53-7-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-7-105, MCA, is amended to read:

"53-7-105. Eligibility. (1) Vocational rehabilitation services shall be provided to any disabled individual who:

(a) is in the state at the time of filing his application *for services* and whose vocational rehabilitation the department of social and rehabilitation services determines after full investigation can be satisfactorily achieved; or

(b) is eligible *for services* under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the department, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational licenses;

(d) customary occupational tools and equipment;

(e) maintenance;

(f) training, *including* books and materials."

Section 2. Section 53-7-306, MCA, is amended to read:

"53-7-306. Vocational rehabilitation services. (1) Vocational rehabilitation services shall be provided to any blind individual who:

(a) at the time of filing his application *for services*, resides in the state for other than a temporary purpose and whose vocational rehabilitation the department, after full investigation, determines can be satisfactorily achieved; or

(b) is eligible *for services* under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals

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certified to the department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational and business licenses;

(d) tools, equipment, initial stock and supplies (including livestock), and capital advances;

(e) training, *including* books and materials;

(f) maintenance."

Approved March 16, 1981.

CHAPTER NO. 56

AN ACT TO AMEND SECTION 3-10-101, MCA, TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS TO CONSTITUTE A JUSTICE'S COURT IN EACH CITY HAVING A POPULATION OF OVER 5,000 AND TO AUTHORIZE THE CITY AND COUNTY TO COMBINE THE OFFICES OF JUSTICE OF THE PEACE AND CITY JUDGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts — authorization to combine with city court. (1) There must be at least one justice's court in each county of the state, *which must be located at the county seat.*

(2) The board of county commissioners of each county of the state shall have authority to constitute:

(a) as it considers necessary, one additional justice's court *which may be located anywhere* in *the* county; *and*

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court shall be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court constituted pursuant to subsection (3) may act as the city judge upon passage of a city ordinance

authorizing such action and upon approval of the ordinance by resolution of the board of county commissioners. If such an ordinance and such a resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary as established under 3-10-207 and 3-11-202 and for proportionate reimbursement for the use of facilities."

Section 2. **Offices of city judge and justice of the peace combined.** The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101.

Approved March 16, 1981.

CHAPTER NO. 57

AN ACT TO AMEND SECTION 61-10-128, MCA, TO PERMIT THE DEPARTMENT OF HIGHWAYS OR A LOCAL ROAD AUTHORITY TO IMPOSE SPEED RESTRICTIONS ON ROADS THAT WILL BE DAMAGED OR DESTROYED AS A RESULT OF CLIMATIC CONDITIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-128, MCA, is amended to read:

"61-10-128. When authorities may restrict right to use roadway. (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight *and speed* of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights *and speed* are reduced. The department or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways."

Approved March 16, 1981.

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CHAPTER NO. 58

AN ACT TO LIMIT THE PAYMENT OF EXTENDED UNEMPLOYMENT INSURANCE BENEFITS TO 2 WEEKS FOR INDIVIDUALS FILING FROM A STATE IN WHICH EXTENDED BENEFITS ARE NOT IN EFFECT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Extended benefits filed interstate.** Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

Approved March 16, 1981.

CHAPTER NO. 59

AN ACT TO AUTHORIZE THE TRANSFER OF ALL-BEVERAGES LICENSES IN CERTAIN CASES; AMENDING SECTION 16-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

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(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) *Except as provided in subsection (6)(b), a* license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 25% in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) Except as provided in subsection (b) above, a license transferred between quota areas under this section may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each

natural person is not a full participant in the ownership and operation of the business authorized by the license.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Approved March 16, 1981.

CHAPTER NO. 60

AN ACT REVISING THE EXCLUSION PROVISION IN THE PUBLIC EMPLOYEES' RETIREMENT ACT FOR LEGISLATIVE EMPLOYEES; AMENDING SECTION 19-3-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 60 working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

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(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed *for 6 months or less* by the legislature *or the legislative council to perform work related to* the legislative session who do not file with the board an election in writing to become members;

(13) students of any public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing within 1 year after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city whichever is later."

Approved March 16, 1981.

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CHAPTER NO. 61

AN ACT AMENDING SECTION 13-25-104, MCA, TO REQUIRE PRESIDENTIAL ELECTORS TO VOTE FOR THE CANDIDATES FOR PRESIDENT AND VICE PRESIDENT WHO RECEIVE THE HIGHEST POPULAR VOTE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-25-104, MCA, is amended to read:

"13-25-104. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana."

Approved March 16, 1981.

CHAPTER NO. 62

AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the information. (1) *(a) An information* may be amended in matters of substance at any time not less than 5 days before trial *with* leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended:

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(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit *an information* to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge *may* be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

Section 2. Section 46-17-101, MCA, is amended to read:

"46-17-101. Initiation of proceedings — amending the complaint. *(1)* In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court."

Approved March 16, 1981.

CHAPTER NO. 63

AN ACT TO AMEND SECTION 2-9-303, MCA, TO AUTHORIZE DISTRICT COURTS OTHER THAN COURTS OF THE FIRST JUDICIAL DISTRICT TO APPROVE COMPROMISE SETTLEMENTS OF CLAIMS AGAINST THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-303, MCA, is amended to read:

"2-9-303. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement *from* the self-insurance reserve fund or deductible reserve fund must be approved by the district court of *the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement."*

Approved March 16, 1981.

CHAPTER NO. 64

AN ACT TO INCREASE THE BOND DEBT LIMIT OF THE MONTANA BOARD OF HOUSING TO $675 MILLION; AMENDING SECTION 90-6-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any one time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed *$675* million. The rate of interest on bonds or notes issued by the board may not exceed 9% per annum."

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Section 2. **Saving clause.** Nothing in this act affects or impairs any provision of resolutions, indentures, loans, contracts, bonds, or notes adopted, entered into, or issued before the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1981.

CHAPTER NO. 65

AN ACT TO REQUIRE THE APPLICATION FOR AND THE POSSESSION OF A PERMIT AND A HEALTH CERTIFICATE, UNLESS THE PERMIT OR CERTIFICATE IS WAIVED, BEFORE CERTAIN ANIMALS, ANIMAL SEMEN, OR ANIMAL BIOLOGICS MAY BE IMPORTED INTO MONTANA; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This part may be cited as the "Animal Importation Permit and Health Certificate Act of 1981".

Section 2. **Definitions.** As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. It includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described thereon have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, swine, and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants.

Section 3. **Documents required for importation — exemption.** (1) Except as provided in subsection (6) no animal, animal semen, or animal biologic may be brought into the state without a permit and also a health certificate.

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(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal into the state.

(3) The department may waive the requirement for a health certificate or a permit as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle shall have in his possession a copy of the permit and, where applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, such transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate or a permit shall be based upon evidence that there will be no significant danger to the public health if the exemption is granted.

Section 4. **Quarantine for illegal entry — liability for expenses.** (1) Animals, animal semen, or animal biologics which enter the state of Montana without the required importation papers or in violation of any rules of the department shall be held in quarantine at the risk of the owner.

(2) The quarantine may be released only after the department has been satisfied, by appropriate means, that the animals, animal semen, or animal biologics under quarantine meet the requirements of law and the rules of the department.

(3) The owner of animals, animal semen, or animal biologics quarantined under this part is liable for all department expenses resulting from that quarantine except the expense of the salary of the supervising officer representing the department. Expenses include, but are not limited to, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, supervision of treatment, and laboratory testing.

Section 5. **Lien resulting from quarantine — foreclosure of lien.** (1) In accordance with the provisions of 81-2-109, the expenses of quarantine detailed in [section 4] are a lien on the animals, semen, or biologics and the department may retain possession of them until the charges and expenses are paid. The lien is dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the animals, semen, or biologics or as much of them as may be necessary to pay the expenses.

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(2) Posting notice for 10 days at three public places in the county is required prior to auction. The lien may also be foreclosed by filing an action against the owner of the property to recover the amount of charges and expenses in a court of competent jurisdiction.

Section 6. **Consignment requirements.** (1) All animals, animal semen, or animal biologics brought into Montana, other than transitory cargo, must be consigned to or in the care of a person, entity, or authorized agent of either located in Montana.

(2) The person, entity, or authorized agent must notify the department of its intent to receive any animals, animal semen, or animal biologics and is responsible for acquiring all required permits and ensuring that they are accompanied by all required health certificates.

(3) No person consigning, transporting, or receiving animals, animal semen, or animal biologics into Montana may authorize, order, or carry out any diversion of them or any portion thereof to a destination or consignee other than as set forth on the permit or health certificate without first obtaining written permission from the department.

Section 7. **Department rulemaking power.** The department may promulgate, administer, and enforce rules necessary to implement this part.

Section 8. **Penalty.** A person convicted of violating [this act] shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 9. **Codification instruction.** This act is intended to be codified as a new part in Title 81, chapter 2, and the provisions of Title 81, chapter 2, part 1, apply to this act.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1981.

CHAPTER NO. 66

AN ACT TO DELETE THE REQUIREMENT THAT DENTISTS, OSTEOPATHIC PHYSICIANS, PODIATRISTS, OPTOMETRISTS, AND CHIROPRACTORS MUST REGISTER THEIR LICENSES IN COUNTIES WHERE THEY PRACTICE; AMENDING SECTIONS 37-4-303, 37-6-304, AND 37-10-301, MCA; AND REPEALING SECTIONS 37-4-304, 37-4-305, 37-5-306, 37-10-305, AND 37-12-306, MCA.

WHEREAS, during the course of its sunset audits the legislative audit committee noted that licensees of several professions are required to register their licenses with the county clerk and recorder; and

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WHEREAS, all such licensees are licensed by the state and county registration serves no public purpose.

THEREFORE, it is the intent of this bill to delete county registration requirements for members of various professions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-303, MCA, is amended to read:

"37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee of $10 shall be charged for issuing the certificate."

Section 2. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — annual renewal fee — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof or any other designation or title, except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot" so as not to mislead the public with respect to his right to treat other portions of the body.

(2) Licenses shall be recorded by the department the same as other medical licenses.

(3) A license renewal fee set by the board in an amount not to exceed $25 shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of a fee of $35.

(4) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 3. Section 37-10-301, MCA, is amended to read:

"37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

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(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) advertise at a price or stated terms of a price or as being free, the following:

(i) the examination or treatment of the eyes;

(ii) furnishing of optometrical services; or

(iii) furnishing a lens, lenses, contact lens, contact lenses, glasses, frames, or fitting thereof. However, this subsection does not apply to advertising goggles, sunglasses, colored glasses, or occupational eye-protective devices if they are not made with refractive values and are not advertised in connection with the practice of optometry or professional service.

(l) adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered

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proper by the judge of the district court in the county where the violation occurred."

Section 4. **Repealer.** Sections 37-4-304, 37-4-305, 37-5-306, 37-10-305, and 37-12-306, MCA, are repealed.

Approved March 16, 1981.

CHAPTER NO. 67

AN ACT TO AMEND SECTION 18-2-101, MCA, TO CLARIFY THE DEFINITION OF CONSTRUCTION FOR STATE BUILDING PROJECTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, and 18-2-114:

(1) "building" includes:

(a) a building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) a building, facility, or structure at a state institution;

(c) a building, facility, or structure owned or to be owned by a state agency, including the department of highways;

(2) "building" does not include:

(a) a building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) a facility or structure used as a component part of a highway or water conservation project;

(3) "construction" includes *the* construction, alteration, *and remodeling of a building,* and *the* equipping and furnishing *of a building* during construction, alteration, *and remodeling, but does not include the repair or maintenance of an existing building.*"

Approved March 16, 1981.

CHAPTER NO. 68

AN ACT AMENDING SECTION 2-16-502, MCA, TO REQUIRE THAT RESIGNATIONS BE MADE TO THE SECRETARY OF STATE AND THAT RESIGNATIONS BE EFFECTIVE UNLESS WITHDRAWN WITHIN 72 HOURS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-502, MCA, is amended to read:

"2-16-502. Resignations. *(1)* Resignations must be in writing and made as follows:

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(a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(b) by all officers commissioned by the governor, to the governor;

(c) by senators and members of the house of representatives, if the legislature is not in session, to the *secretary of state* and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the *secretary of state*;

(d) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(e) by all other appointed officers, to the body or officer that appointed them;

(f) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations."

Approved March 16, 1981.

CHAPTER NO. 69

AN ACT TO ADOPT PROCEDURES FOR LOCAL GOVERNMENT INITIATIVES; TO REQUIRE APPROVAL AS TO FORM OF PETITIONS AND PREPARATION OF BALLOT STATEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Petition — submission for approval — statement of purpose and implication.** (1) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form. The election administrator shall review the sample petition to ensure compliance with 7-5-131 and 7-5-132.

(2) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit for preparation of the ballot statement. The local government attorney shall prepare a concise ballot statement not exceeding 100 words. This statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

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(3) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR weekly commission meetings.

☐ AGAINST weekly commission meetings.

(4) If the petition is rejected as to form, the election administrator must send written notice to the person who submitted the sample petition within 10 days after submission of the sample.

(5) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

Section 2. **Petition — time limit.** All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 7, chapter 5, part 1, and the provisions of 7-5-131 through 7-5-137 apply to sections 1 and 2.

Approved March 17, 1981.

CHAPTER NO. 70

AN ACT ALLOWING COUNTIES OF THE FIRST CLASS TO AWARD SEPARATE PRINTING CONTRACTS WHICH MAY BE AWARDED ON AN ANNUAL OR JOB BASIS; AMENDING SECTION 7-5-2411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2411, MCA, is amended to read:

"7-5-2411. County printing contract. (1) Except as provided in subsection (2), the county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be:

(a) of general circulation;

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(b) published at least once a week;

(c) published in the county;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(2) *(a)* In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class, the county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county. *This* contract *or one separated under subsection (2)(b)* shall be let to a commercial printing establishment *or establishments, as the case may be,* which shall have been in business in the county for at least 1 year.

(b) The board of county commissioners for counties of the first class may award separate contracts for printed forms, materials, and supplies required by the counties. The separate contracts may be awarded on an annual basis or may be awarded for a specific printing job.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing."

Approved March 17, 1981.

CHAPTER NO. 71

AN ACT TO CLARIFY THE ACTIONS TO BE TAKEN TO REMOVE AN UNATTENDED VEHICLE FROM A ROADWAY; AMENDING SECTION 61-8-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-705, MCA, is amended to read:

"61-8-705. Officers or highway patrolmen authorized to remove illegally stopped vehicles. (1) Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the provisions of 61-8-353 through 61-8-355, such officer or highway patrolman is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

(2) Whenever any police officer or highway patrolman finds a vehicle unattended upon any bridge or *roadway* or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrolman

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is hereby authorized to provide for the removal of such vehicle *pursuant to Title 61, chapter 12, part 4, except that the time limits imposed in 61-12-401 do not apply to removal under this subsection.*"

Approved March 17, 1981.

CHAPTER NO. 72

AN ACT PROVIDING THAT AN ESCAPE FROM A HALFWAY HOUSE, LIFE SKILLS CENTER, OR FURLOUGH PLACEMENT CONSTITUTES FELONY ESCAPE; AMENDING SECTION 45-7-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, or city jail by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, *halfway house, life skills center, or furlough placement*; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection."

Approved March 17, 1981.

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CHAPTER NO. 73

AN ACT TO CHANGE THE EFFECTIVE DATE OF AN INITIATIVE, CONSTITUTIONAL AMENDMENT, OR REFERENDUM TO OCTOBER 1 FOLLOWING APPROVAL; AMENDING SECTION 13-27-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-105, MCA, is amended to read:

"13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue approved by the people is effective on *October* 1 following approval. *However, if the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.*

(2) Unless the legislature provides otherwise, a constitutional amendment proposed by the legislature and approved by the people is effective on *October* 1 following approval.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective *October* 1 following the election."

Approved March 17, 1981.

CHAPTER NO. 74

AN ACT EXEMPTING INSTITUTIONS AND COMMUNITY-BASED PROGRAMS IN THE DEPARTMENT OF INSTITUTIONS FROM THE BIDDING REQUIREMENT FOR PURCHASING CLOTHING; AMENDING SECTION 18-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-104, MCA, is amended to read:

"18-4-104. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in

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the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of part 2 of this chapter for the purchase of suitable clothing by the department of institutions for residents of *its institutions and community-based programs.*

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Approved March 17, 1981.

CHAPTER NO. 75

AN ACT TO INCREASE THE MAXIMUM-GENERAL-FUND-BUDGET-WITHOUT-A-VOTED-LEVY LIMITATION FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS AND TO REVISE THE ADDITIONAL LEVY PROVISIONS; AMENDING SECTIONS 20-9-316 THROUGH 20-9-319 AND 20-9-353, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1981-82. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$15,578* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$15,578* plus *$651* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$21,438* plus *$651* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$34,227* plus *$407.70* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

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(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,513* shall be decreased at the rate of *$1.47* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,424* shall be decreased at the rate of *$1.34* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,156* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

"20-9-317. High school maximum budget schedule for 1981-82. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$88,753.*

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$3,698* shall be decreased at the rate of *$20.17* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$3,375* shall be decreased at the rate of *$20.17* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,165* shall be decreased at the rate of *$3.37* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$1,828* shall be decreased by *$1.85* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$1,642* shall be decreased at the rate of *34* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,540* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 3. Section 20-9-318, MCA, is amended to read:

"20-9-318. Elementary school maximum budget schedule for 1982-83 and succeeding years. (1) For each elementary school having

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an ANB of nine or fewer pupils, the maximum shall be *$17,915* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$17,915* plus *$748.70* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$24,654* plus *$748.70* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$39,361* plus *$468.90* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,740* shall be decreased at the rate of *$1.69* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,638* shall be decreased at the rate of *$1.54* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,329* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

"20-9-319. High school maximum budget schedule for 1982-83 and succeeding years. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$102,066*.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$4,253* shall be decreased at the rate of *$23.19* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$3,882* shall be decreased at the rate of *$23.19* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,490* shall be decreased at the rate of *$3.88* for each additional pupil until the ANB shall have reached 200 pupils.

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(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,102* shall be decreased by *$2.13* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$1,889* shall be decreased at the rate of *39* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,771* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 5. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional levy for general fund — election for authorization to impose. (1) The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district.

(2) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that no election shall be required to permit the school trustees to use federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget as established in 20-9-316 through 20-9-321 by the amount of these funds. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

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"PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy."

(3) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

(4) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective."

Approved March 17, 1981.

CHAPTER NO. 76

AN ACT TO CLARIFY THAT THE DEPARTMENT OF REVENUE MAY NOT BE REQUIRED TO LEVY OR COMPUTE A TAX RESULTING FROM ANY CHANGE IN AN EXISTING TAXING JURISDICTION UNLESS FORMALLY NOTIFIED OF THE CHANGE BY JANUARY 1 OF THE YEAR IN WHICH THE TAXES ARE TO BE LEVIED; AMENDING SECTION 15-10-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-321, MCA, is amended to read:

"15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions. The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created *or for any change in an existing jurisdiction* unless formally notified of its creation *or change* by January 1 of the year in which the taxes are to be levied."

Approved March 18, 1981.

CHAPTER NO. 77

AN ACT TO AMEND SECTION 15-2-303, MCA, TO REQUIRE SERVICE OF THE APPEAL PETITION ON THE DEPARTMENT OF REVENUE AND TO ELIMINATE THE REQUIREMENT OF SERVICE ON THE STATE TAX APPEAL BOARD IN THE CASE OF AN APPEAL FROM A DECISION OF THE STATE TAX APPEAL BOARD; TO REQUIRE THE DEPARTMENT OF REVENUE TO NOTIFY THE STATE TAX APPEAL BOARD OF APPEALS; TO ELIMINATE THE REQUIREMENT THAT THE STATE TAX APPEAL BOARD BE SERVED WITH ALL PLEADINGS AND DOCUMENTS; AND TO REQUIRE THAT THE DEPARTMENT OF REVENUE FURNISH THE STATE TAX APPEAL BOARD WITH COPIES OF PLEADINGS AND DOCUMENTS UPON REQUEST OF THE BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-303, MCA, is amended to read:

"15-2-303. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this part.

(2) Proceedings for review shall be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located (except the taxpayer may, at his option, file in the district court of the first judicial district) and serving a copy of the petition on the *department of revenue or taxpayer* within 30 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 30 days after the decision thereon. *The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review but failure to do so shall have no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.*

(3) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission shall be instituted in the district court of the first judicial district.

(4) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced."

Approved March 18, 1981.

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CHAPTER NO. 78

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO ACCEPT A CASH COMPLIANCE BOND FOR TEMPORARY OPERATION BY A SPECIAL FUEL USER AND REQUIRING THE USER TO OBTAIN A PERMANENT BOND OR FORFEIT THE TEMPORARY BOND.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Temporary cash compliance bond.** (1) A special fuel user subject to the licensing requirements of this part may obtain a temporary 30-day operating permit by posting a $100 cash compliance bond on each vehicle at any weigh station, or with any person authorized by the department of highways to issue a cash compliance bond.

(2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day period, and otherwise complies with the requirements of this part, the $100 payment received for the temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the $100 payment is forfeited to the state.

(3) The temporary permit is issued subject to the same restrictions and requirements as the annual permit.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to section 1.

Approved March 18, 1981.

CHAPTER NO. 79

AN ACT TO AUTOMATICALLY ASSIGN SUPPORT RIGHTS OF PERSONS APPLYING FOR PUBLIC ASSISTANCE TO THE STATE, THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, AND THE COUNTY WELFARE DEPARTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department, and shall contain information required by the department.

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(2) A person by signing an application for public assistance, assigns to the state, the department, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 2, part 6, and the provisions of Title 53, chapter 2, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1981.

CHAPTER NO. 80

AN ACT TO PROVIDE THAT A WATER JUDGE MAY BE A RETIRED DISTRICT JUDGE; TO PROVIDE THAT A WATER JUDGE MAY RESIGN; AND TO PERMIT A DISTRICT JUDGE OR RETIRED DISTRICT JUDGE TO SIT AS A WATER JUDGE IN MORE THAN ONE DIVISION WHEN CALLED BY THE CHIEF JUSTICE OR ANOTHER WATER JUDGE; AMENDING SECTIONS 3-7-201, 3-7-203, 3-7-213, 3-7-501, AND 19-5-103; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. *Except as provided in subsection (2) and 3-7-213, a* water judge must be a district judge *or retired district judge* of a judicial district wholly or partly within the water division.

(2) A district judge *or retired district judge* may sit as a water judge in more than one division *if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.*

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(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division."

Section 2. Section 3-7-203, MCA, is amended to read:

"3-7-203. Vacancies. If a vacancy occurs, it shall be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, *resigns,* retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a *water* judge."

Section 3. Section 3-7-213, MCA, is amended to read:

"3-7-213. Designation of alternate judge. The water judge may designate any other district judge *or retired district judge* to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm."

Section 4. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division *except as provided in 3-7-201 and 3-7-213.*

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

Section 5. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judge for duty. (1) Every judge or justice receiving retirement pay under the provisions of this chapter shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court, any district court, *or any water court* under such directions as the supreme court may give, including the examination of the facts, cases, *and* authorities cited, and the preparation of opinions for and on behalf of the *supreme* court, *district court, or water court, or to serve as water judge.* The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. In addition, for each day of temporary service a retired justice

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or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered minus an amount equal to one-twentieth of the monthly retirement allowance the retired justice or judge is receiving for each day of service rendered."

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1981.

CHAPTER NO. 81

AN ACT TO PROVIDE FOR COMPENSATORY ROYALTIES IN LIEU OF OFFSET DRILLING ON STATE OIL AND GAS LEASES; AMENDING SECTION 77-3-427, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-427, MCA, is amended to read:

"77-3-427. Provision for offset wells — compensatory royalties. Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state. *The board may allow the lessee the option of paying a compensatory royalty on a nonproducing lease in lieu of drilling an offset well if it determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.*"

Approved March 18, 1981.

CHAPTER NO. 82

AN ACT TO RAISE THE MAXIMUM AGE AT WHICH A FIREFIGHTER MAY BE HIRED FROM 31 YEARS TO 34 YEARS OF AGE; AMENDING SECTION 7-33-4107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-4107, MCA, is amended to read:

"7-33-4107. Qualifications of firefighters. *The state of Montana determines that age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of the firefighting profession and the expectation of many years of emergency service.* The qualifications of firefighters shall be that they:

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(1) shall not be *more than 34* years of age at the time of original appointment;

(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and

(3) at the option of said city or town, shall be qualified voters of the city or town."

Approved March 18, 1981.

CHAPTER NO. 83

AN ACT TO REMOVE AUTHORITY OVER STAFFING FROM THE BOARDS OF MEDICAL EXAMINERS, NURSING, BARBERS, AND WATER WELL CONTRACTORS; AMENDING SECTIONS 37-3-203, 37-8-204, 37-30-203, AND 37-43-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter."

Section 2. Section 37-8-204, MCA, is amended to read:

"37-8-204. Qualifications of secretary. Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:

(1) a citizen of the United States;

(2) a graduate of an approved school of nursing;

(3) a holder of at least a master's degree with postgraduate courses in nursing;

(4) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing."

Section 3. Section 37-30-203, MCA, is amended to read:

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"37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors — price agreements. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive $30 per day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

(4) The board may approve price agreements establishing minimum prices for barber work which are signed and submitted to the board by an organized group or groups of at least 75% of the barbers in a city or town if the board, after ascertaining by investigations and proofs as the situation permits and requires, finds that the price agreement is just and will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to this work. Under this chapter, a city or town includes the territory within its legal limits and the territory adjacent to it and lying within 3 miles of its legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall consider all conditions affecting the barber business in its relation to the public health and safety.

(5) In determining reasonable minimum prices, the board shall consider the necessary cost incurred in the city or town to maintain a barbershop in a clean, healthful, and sanitary condition.

(6) After making an investigation, the board shall by order fix the minimum price for work usually performed in a barbershop in the city or town in which the price agreement has been signed. The board may, on the petition of 50% of the barbers of the city or town, readjust the minimum prices, and the new prices must be approved by 75% of the barbers in the city or town.

(7) This section does not apply to students who have been enrolled less than 9 months in a barber college in this state or who are not apprentice barbers."

Section 4. Section 37-43-201, MCA, is amended to read:

"37-43-201. Seal — employees — compensation of members. (1) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(2) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $20 per

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day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The state engineer, the director of environmental sanitation of the state board of health, and other employees of the state of Montana shall receive no extra compensation for their services as members of the board."

Approved March 18, 1981.

CHAPTER NO. 84

AN ACT TO AMEND SECTION 32-5-304, MCA, RELATING TO RECEIPTS GIVEN TO A CONSUMER LOAN BORROWER TO ALLOW FOR THE USE OF MECHANICAL DATA PROCESSING EQUIPMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-304, MCA, is amended to read:

"32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made *in cash* on account of any loan at the time such payment is made;

(2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower. *Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any such system containing information equivalent to that required on a loan ledger or card.*

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person."

Approved March 18, 1981.

CHAPTER NO. 85

AN ACT TO WAIVE THE MINIMUM REQUIREMENTS FOR PUPIL-INSTRUCTION DAYS WHEN A SCHOOL IS CLOSED BY REASON OF A DECLARATION OF EMERGENCY; AMENDING SECTION 20-9-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-802, MCA, is amended to read:

"20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or any combination of the foregoing that acts as a principal cause for a school district's inability to conduct one or more scheduled school days.

(2) "Declaration of emergency" means a declaration of a state of emergency by the governor as authorized by 10-3-302.

(3) "School day" means the school day defined in 20-1-302.

(4) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year 1 week beyond the last scheduled day; or

(b) the use of scheduled vacation days."

Section 2. **School closure by declaration of emergency.** If a school is closed by reason of a declaration of emergency by the governor, the pupil-instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 20, chapter 9, part 8, and the provisions of Title 20 apply to section 2.

Approved March 18, 1981.

CHAPTER NO. 86

AN ACT TO AMEND SECTION 16-4-105, MCA, TO PERMIT THE HOLDER OF A WINE LICENSE AMENDMENT TO SELL WINE FOR BOTH ON- AND OFF-PREMISES CONSUMPTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the

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most recent official United States census authorized by congress, as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the

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license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on *or off* the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Approved March 18, 1981.

CHAPTER NO. 87

AN ACT TO TERMINATE THE BOARD OF OSTEOPATHIC PHYSICIANS AND TRANSFER REGULATION OF OSTEOPATHY TO THE BOARD OF MEDICAL EXAMINERS; PROVIDING FOR CONTINUING LICENSURE OF CURRENT LICENSEES WHO MEET EXISTING QUALIFICATIONS FOR LICENSURE; PROVIDING FOR TRANSFER OF FUNDS AND RECORDS; CONTINUING EXISTING RULES; AMENDING SECTIONS 37-5-101 AND 37-5-302, MCA; REPEALING SECTIONS 2-15-1607, 37-5-201, AND 37-5-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-5-101, MCA, is amended to read:

"37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of *medical examiners* provided for in *2-15-1605*.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession."

Section 2. Section 37-5-302, MCA, is amended to read:

"37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license is $20."

Section 3. **Continuing licensure of current licensees.** Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act.

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Section 4. **Transfer of funds and records.** By the effective date of this act, all funds and records of the board of osteopathic physicians shall be transferred to the board of medical examiners.

Section 5. **Continuation of existing rules.** Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners.

Section 6. **Repealer.** Sections 2-15-1607, 37-5-201, and 37-5-202, MCA, are repealed.

Section 7. **Effective date.** This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of osteopathic physicians.

Approved March 18, 1981.

CHAPTER NO. 88

AN ACT TO ELIMINATE THE REQUIREMENTS THAT CITIES MUST PAY 100% OF THE PREMIUM FOR INSURANCE COVERAGE FOR FIREFIGHTERS AND POLICEMEN; TO ESTABLISH THAT THE CITIES CONTRIBUTE NO LESS THAN THE RATE IN EFFECT PROVIDED AS OF JULY 1, 1980; AND TO PROVIDE FOR NEGOTIATION OF ADDITIONAL PREMIUM PAYMENTS; AMENDING SECTIONS 7-32-4117 AND 7-33-4130, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4117, MCA, is amended to read:

"7-32-4117. Group insurance for policemen — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay *no less than* the premium *rate in effect as of July 1, 1980, for* insurance coverage for *policemen* and *their* dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) In compliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town."

Section 2. Section 7-33-4130, MCA, is amended to read:

"7-33-4130. Group insurance for firefighters — funding. (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

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(a) provide the same insurance to their respective firefighters;

(b) pay *no less than* the premium *rate in effect as of July 1, 1980, for* insurance coverage for *firefighters* and *their* dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied."

Approved March 18, 1981.

CHAPTER NO. 89

AN ACT TO AMEND THE MONTANA SUBDIVISION AND PLATTING ACT TO PROVIDE FOR JOINT HEARINGS AND COORDINATION OF REQUIREMENTS FOR ANNEXATION WHENEVER POSSIBLE; AMENDING SECTIONS 76-3-601 AND 76-3-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

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(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 2. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

Approved March 19, 1981.

CHAPTER NO. 90

AN ACT SUBJECTING FEES FOR CERTAIN MEDICAL, CHIROPRACTIC, AND PARAMEDICAL SERVICES TO REGULATION BY THE DIVISION OF WORKERS' COMPENSATION; AMENDING SECTION 39-71-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services. *(1)* In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

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(a) After the happening of the injury, the employer or insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The employer or insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) Fees and charges for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established by the workers' compensation division based on the 90th percentile of usual and customary charges of the medical specialty involved based upon the most recent 6-months data as determined in January and July of each year."

Approved March 19, 1981.

CHAPTER NO. 91

AN ACT TO AMEND SECTION 1-11-301, MCA, TO PROVIDE FOR THE FREE DISTRIBUTION OF COPIES OF THE MONTANA CODE ANNOTATED TO THE STATE LAW LIBRARY AND TO MONTANA'S DEPOSITORY LIBRARIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-301, MCA, is amended to read:

"1-11-301. Publication and sale of Montana Code Annotated. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as herein provided.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public shall be fixed by the legislative council but may not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be deposited in the revolving fund, from which fund appropriations may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets.

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(5) (a) The Montana Code Annotated and supplements and other subsequent and ancillary publications except annotations shall be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation headquarters library under 22-1-402, one copy.

(b) The state law library in Helena shall be provided with four copies of the Montana Code Annotated and supplements including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Approved March 19, 1981.

CHAPTER NO. 92

AN ACT TO MAKE THE TRAFFICKING IN BODY PARTS OF UNLAWFULLY TAKEN WILDLIFE PROTECTED BY THE STATE OF MONTANA A FELONY PUNISHABLE BY $10,000 FINE OR 1 YEAR IMPRISONMENT, OR BOTH; AMENDING SECTION 87-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-111, MCA, is amended to read:

"87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. *(1)* It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section shall not prohibit the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof or the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game animals, game birds, game fish, or fur-bearing animals.

(3) Except as provided in subsection (4), any person violating any of the provisions of this section *is* guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of

$10,000 or imprisonment in the state prison for a term of 1 year, or both."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1981.

CHAPTER NO. 93

AN ACT TO ALLOW A TRUSTEE TO INVEST TRUST FUNDS IN DEMAND TIME SAVINGS ACCOUNTS AND TIME CERTIFICATES OF DEPOSIT; AMENDING SECTION 72-21-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-21-202, MCA, is amended to read:

"72-21-202. Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust, including but not limited to the powers specified in subsection (2).

(2) A trustee has the power, subject to subsection (1) of this section and to 72-21-203:

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to invest trust funds, including investments, in demand time savings accounts and time certificates of deposit in any bank, including a bank operated by the trustee;

(h) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition,

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change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(i) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(j) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(k) to enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the trust;

(l) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(m) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(n) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(o) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(p) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(q) to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(r) to insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons;

(s) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(t) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

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(u) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(v) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(w) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides, or others;

(x) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(y) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(z) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(aa) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee."

Approved March 19, 1981.

CHAPTER NO. 94

AN ACT TO INCREASE THE CAPABILITY OF THE DEPARTMENT OF BUSINESS REGULATION TO CONTROL THE OPERATION OF OUT-OF-STATE POSTSECONDARY EDUCATIONAL INSTITUTIONS WITHIN THE STATE; AMENDING SECTIONS 20-30-101 AND 20-30-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-30-101, MCA, is amended to read:

"20-30-101. Legislative purpose and definitions. (1) It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that institutions offering postsecondary educational, vocational, and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair, and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable postsecondary institutions which are in the great majority. Thus it is the purpose of this

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chapter to provide for the protection, education, and welfare of the citizens of this state.

(2) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Advisory council" or "council" means the advisory council created by 2-15-1804.

(b) "Agent" means any person owning any interest in, employed by, or representing a postsecondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such postsecondary institution or who offers to award educational credentials on behalf of such institution for remuneration or who holds himself out to the residents of this state as representing a postsecondary institution for any such purpose.

(c) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

(d) "Department" means the department of business regulation.

(e) "Education or educational services" means a class, course, or program of training, instruction, or study.

(f) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education through a postsecondary educational institution.

(g) "Grant" means sell, award, confer, bestow, or give.

(h) "Institution" means an academic, vocational, technical, home study, business, professional, or other school, college, or university or any person, association, or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state.

(i) "License" means written approval issued by the department to operate or to contract to operate a postsecondary institution in this state.

(j) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit, or encourage any person, directly or indirectly, in any form, to perform the act described.

(k) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association, or corporation to establish and maintain such facility.

(l) "Permit" means written approval issued by the department to any person to act as an agent for a postsecondary educational institution.

(m) "Postsecondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance, for the attainment of academic, professional, or vocational objectives."

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Section 2. Section 20-30-102, MCA, is amended to read:

"20-30-102. Exemptions. The following are exempt from the provisions of this chapter:

(1) *any program or course of instruction of an institution* accredited by a national or regional accrediting agency recognized by the board of regents of higher education and notification of such recognition having been given to the department by *the* board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without the payment of fees, unless such education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Title 37, chapter 31."

Approved March 19, 1981.

CHAPTER NO. 95

AN ACT TO REQUIRE A CODE IMPRINT ON CERTAIN DRUGS AS A MEANS OF IDENTIFICATION; PROVIDING FOR ADMINISTRATION BY THE BOARD OF PHARMACISTS; AMENDING SECTIONS 50-31-301 AND 50-31-506, MCA; PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-301, MCA, is amended to read:

"50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia

under different official titles, the official title used in the United States Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(4) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(5) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label whether or not he is the manufacturer of the drug.

(6) "Solid dosage form" means capsules or tablets intended for oral use.

(7) "Legend drug" means any drug defined by section 503(b) of the federal Food, Drug and Cosmetic Act, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."""

Section 2. **Code imprint required on legend drugs.** No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

Section 3. **Exemptions from code imprint requirement.** The board of pharmacists may grant exemptions from the requirements of [sections 2 and 4] upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of [section 2] impractical or impossible. Any exemption granted must be included in the list required by [section 4] and must describe the physical characteristics and type of drug covered by the exemption.

Section 4. **List of code imprints to be provided.** Upon request of the board of pharmacists, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

Section 5. Section 50-31-506, MCA, is amended to read:

"50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, *[section 2 or 4],* 50-31-501, 50-31-502, or 50-31-208 *is* guilty of a misdemeanor and shall on conviction thereof be subject to

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imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine."

Section 6. **Codification instruction.** Sections 2 through 4 are intended to be codified as an integral part of Title 50, chapter 31, part 3, and the provisions of Title 50, chapter 31, parts 3 and 5, apply to sections 2 through 4.

Section 7. **Effective date.** This act is effective January 1, 1983.

Approved March 19, 1981.

CHAPTER NO. 96

AN ACT TO REESTABLISH THE BOARD OF VETERINARIANS; DELETING LICENSURE OF VETERINARY TECHNICIANS; MODIFYING EXAMINATION SCHEDULE; AMENDING SECTIONS 2-8-103, 37-18-202, 37-18-303, 37-18-501, AND 37-18-502, MCA; REPEALING SECTIONS 37-18-103, 37-18-401 THROUGH 37-18-405, AND 37-18-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Veterinarians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Veterinarians be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of veterinarians is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

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(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

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(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

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(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of veterinarians, department of professional and occupational licensing, created by 2-15-1618."

Section 3. Section 37-18-202, MCA, is amended to read:

"**37-18-202. Powers of board and department — examinations — prosecutions.** (1) The board may adopt rules and orders necessary for the performance of its duties, prescribe forms for application for examination and license, and prepare examinations. The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(2) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court."

Section 4. Section 37-18-303, MCA, is amended to read:

"**37-18-303. Examination — temporary permit pending examination.** (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held *when determined necessary by the board, but not less frequently than once* each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set annually by the board and shall take another complete examination in all subjects.

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(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section."

Section 5. Section 37-18-501, MCA, is amended to read:

"37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder."

Section 6. Section 37-18-502, MCA, is amended to read:

"37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(3). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18."

Section 7. **Repealer.** Sections 37-18-103, 37-18-401 through 37-18-405, and 37-18-411, MCA, are repealed.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1981.

CHAPTER NO. 97

AN ACT TO REVISE THE LAW GOVERNING THE TERMS OF A CONTRACT NEGOTIATED BETWEEN THE TRUSTEES OF A SCHOOL DISTRICT AND THE CURRENT SCHOOL BUS CONTRACTOR; AMENDING SECTION 20-10-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-125, MCA, is amended to read:

"20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party

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for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than *12%* per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1981.

CHAPTER NO. 98

AN ACT TO REVISE THE LAW RELATING TO CAMPAIGN DEPOSITORIES; AMENDING SECTIONS 13-37-205 AND 13-37-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-205, MCA, is amended to read:

"13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one

primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, *credit union, savings and loan association or building and loan association* authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize his regular or personal account in the depository as a campaign account."

Section 2. Section 13-37-207, MCA, is amended to read:

"13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account, *share draft account, share checking account, or negotiable order of withdrawal account* in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records."

Approved March 19, 1981.

CHAPTER NO. 99

AN ACT TO CLARIFY THE LAW REGARDING DISQUALIFICATIONS FOR EXTENDED UNEMPLOYMENT INSURANCE BENEFITS AND TO REDEFINE THE DISQUALIFICATION FOR EXTENDED BENEFITS FOR FAILURE TO APPLY FOR OR TO ACCEPT SUITABLE WORK; DEFINING SUITABLE WORK IN ACCORDANCE WITH FEDERAL REQUIREMENTS; AMENDING SECTION 39-51-2508, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits — disqualifications defined. *(1)* An individual shall be eligible to

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receive extended benefits with respect to any week of unemployment in this eligibility period only if the division finds that with respect to such week:

(a) he is an exhaustee, as defined in 39-51-2501(6);

(b) he is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he is disqualified, he satisfies the requirements for requalification in that part, except that subsections (1), (2), and (4) of 39-51-2304 do not apply to this section; and

(c) he has satisfied the *other* requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(b), an individual is disqualified for extended benefits if he fails without good cause either to apply for available and suitable work, to accept suitable work offered to him, or, when so directed by the division, to return to his customaryoccupation, if any. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred, with 4 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(3) For the purposes of subsection (2), the division shall, by rule, define the term "suitable work". Such definition shall be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after [the effective date of this act]."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1981.

CHAPTER NO. 100

AN ACT TO REVISE CERTAIN PENALTIES RELATING TO SIZE, WEIGHT, AND LOAD STANDARDS FOR MOTOR VEHICLES; AMENDING SECTION 61-10-145, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-145, MCA, is amended to read:

"61-10-145. Penalties — disposition of fines. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $15 or more than $50. A person, firm, or corporation convicted of operating a motor vehicle upon the public

highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $15 for any excess weight up to and including 2,000 pounds;

(b) $25 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $35 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $50 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $80 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $110 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $150 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $200 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $250 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $300 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $500 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $1,000 for any excess weight more than 25,000 pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-110 shall specify the amount of the overweight which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) *It is a misdemeanor, punishable as provided in 46-18-212, for any person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142.*

(4) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund."

Approved March 19, 1981.

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CHAPTER NO. 101

AN ACT TO ELIMINATE THE ANNUAL APPLICATION REQUIREMENT FOR SENIOR CITIZENS TO RECEIVE A PREFERENTIAL PROPERTY CLASSIFICATION; AMENDING SECTION 15-6-151, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-151, MCA, is amended to read:

"15-6-151. Application for class five and certain class four classifications. (1) A person applying for classification of property described in subsection (1)(c) of 15-6-135 or subsection (1)(d) of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

(b) his retirement benefits;

(c) his marital status;

(d) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(e) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible. *The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time it considers necessary.*

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

Approved March 20, 1981.

CHAPTER NO. 102

AN ACT TO PROVIDE A METHOD FOR DISTRICT COURT JUDGES AS EX OFFICIO PROBATE JUDGES TO ISSUE DEEDS FOR ENTRY TOWNSITE LOTS THAT WERE NOT ORIGINALLY ISSUED OR WERE LOST.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Entry townsite land defined.** "Entry townsite land" means land upon which an entry was made on or before July 1, 1921, by a probate court of any county in the territory or state of Montana for a

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townsite and a patent for the townsite was issued by the United States to the probate court or judge under the provisions of an act of congress entitled "An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands", approved March 2, 1867, or other and subsequent acts of congress relating to entering lands for townsite purposes.

Section 2. **Petition for deed — qualified claimants.** A person may petition for a deed to a lot on entry townsite land from the district court of the county in which the entry townsite land is located if:

(1) the claimant entered the lot and is in possession of the lot; or

(2) the claimant is a successor in interest, by purchase or other lawful method of transferring an interest in land, of a person who originally entered the lot.

Section 3. **Notice requirements.** Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of his claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1.

Section 4. **Judge to issue deed — requirements.** If there are no valid conflicting claims to the lot on the entry townsite, the district court judge, as ex officio probate judge of the county, shall issue the claimant a good and sufficient deed for the lot on the entry townsite land upon finding in a hearing that:

(1) the petitioner is a qualified claimant under [section 2]; and

(2) (a) no deed has been issued by a probate or district court judge of the county where the entry townsite land is located for the claimed lot; or

(b) a deed for the claimed lot has been issued but not recorded and has been lost or cannot be found.

Approved March 20, 1981.

CHAPTER NO. 103

AN ACT TO AMEND THE DRIVING UNDER INFLUENCE LAWS BY PROVIDING THAT QUALIFIED PERSONS ACTING UNDER THE SUPERVISION AND DIRECTION OF A PHYSICIAN OR A REGISTERED NURSE MAY WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW; BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO SUCH PERSONS BY CHANGING THE REFERENCE TO THE RULEMAKING BODY; AND BY CHANGING INTOXICATING LIQUOR TO ALCOHOL; AMENDING SECTIONS 61-8-402 THROUGH 61-8-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways of this state

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shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of *alcohol*. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of *alcohol*. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of *alcohol* and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All such suspensions are subject to review as hereinafter provided."

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of *alcohol*, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of *alcohol*, evidence of the amount of alcohol in

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the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of *alcohol.*

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of *alcohol.*"

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician or registered nurse *or other qualified person under the supervision and direction of a physician or registered nurse* acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(4) No physician or registered nurse *or other qualified person under the supervision and direction of a physician or registered nurse* shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If the test given under 61-8-402 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The division of motor vehicles in cooperation with the *division of forensic sciences,* or any other appropriate agency, shall adopt uniform *rules* for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary."

Approved March 20, 1981.

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CHAPTER NO. 104

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO THE DUTIES OF THE CLERK OF DISTRICT COURT; AMENDING SECTIONS 3-5-501, THROUGH 3-5-503, 3-5-513, AND 72-3-1015, MCA; AND REPEALING SECTION 46-18-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-501, MCA, is amended to read:

"3-5-501. General duties. The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

(1) take charge of and safely keep or dispose of according to law all books, papers, and records which are filed or deposited in his office;

(2) act as clerk of the district court and attend each term or session thereof and upon the judges at chambers when required;

(3) issue all process and notices required to be issued;

(4) enter all orders, judgments, and decrees proper to be entered;

(5) keep in each court a register of actions, as provided in 3-5-504;

(6) keep for the district court two separate indexes, one labeled "general index—plaintiffs" and the other labeled "general index—defendants", which shall be in the form prescribed in 3-5-502;

(7) keep a minute book, which must contain the daily proceedings of court, *which* may be signed by the clerk;

(8) keep a fee book, in which must be shown in an itemized form all fees that he has received for any services rendered in his capacity as clerk."

Section 2. Section 3-5-502, MCA, is amended to read:

"3-5-502. Indexes to court records. Each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records required by law, *an index* called "General Index—*Plaintiffs*" and also a second *index* to be called "General Index—*Defendants*". *Each index shall be in a form determined by the clerk to best fulfill the needs of the court and other users of the index and shall contain, at a minimum, those entries required by 3-5-503.*"

Section 3. Section 3-5-503, MCA, is amended to read:

"3-5-503. Duties concerning indexes. Said clerk shall cause to be made in each *index* correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the General Index—*Plaintiffs* and alphabetically by the name of the defendants in the General Index—*Defendants.*"

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Section 4. Section 3-5-513, MCA, is amended to read:

"3-5-513. Probate records. The clerk of the district court shall:

(1) keep a book called "Record of Probate Proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters and must be indexed in the names of the deceased person *or* ward;

(2) keep a book called "Register of Probate and Guardianship Proceedings", in which must be entered the name of the estate and the register number with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the fees charged."

Section 5. Section 72-3-1015, MCA, is amended to read:

"72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the *supreme court administrator* shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and his attorney receive no fee or other compensation from the estate."

Section 6. **Repealer.** Section 46-18-602, MCA, is repealed.

Approved March 20, 1981.

CHAPTER NO. 105

AN ACT TO GENERALLY CLARIFY AND REVISE THE PROVISIONS RELATING TO EARLY RETIREMENT OPTIONS, INVOLUNTARY RETIREMENT ALLOWANCES, AND DEATH BENEFIT PAYMENTS IN THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-502, 19-7-504, AND 19-7-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-502, MCA, is amended to read:

"19-7-502. Early retirement option. If a member has served 20 years of creditable service as a sheriff and has reached the age of 55 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 25 years of creditable service *or reached age 65, whichever is less.*"

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Section 2. Section 19-7-504, MCA, is amended to read:

"19-7-504. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) *a retirement allowance beginning on his 55th birthday, calculated under the provisions of 19-7-502.*"

Section 3. Section 19-7-604, MCA, is amended to read:

"19-7-604. Payments in case of death before retirement. (1) If a member dies before retirement, his beneficiary is entitled to elect *one* of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) a retirement allowance *based on* 2% of the final salary for each year of service up to a maximum of 25 years, *reduced actuarially from age 65*;

(c) *a retirement allowance based on one-half of final salary, reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation, if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.*

(2) *On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board.*"

Approved March 20, 1981.

CHAPTER NO. 106

AN ACT TO REESTABLISH THE BOARD OF COSMETOLOGISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES AND TO GENERALLY REVISE THE COSMETOLOGIST LICENSING LAWS; MODIFYING THE BOARD MAKEUP; REQUIRING AN ANNUAL INSPECTION OF COSMETOLOGICAL FACILITIES; ELIMINATING THE ONE-YEAR EXPERIENCE REQUIREMENT FOR A MANAGER-OPERATOR; DELETING SOME EXEMPTIONS FROM LICENSING; PROVIDING FOR RECIPROCAL LICENSING OF MANAGER-OPERATORS; REMOVING THE PUBLIC EMPLOYEES EXEMPTION FROM LICENSURE AS AN ELECTROLOGIST; AMENDING SECTIONS 2-8-103, 2-15-1626, 37-31-302, 37-31-305 THROUGH 37-31-308, 37-31-312, 37-31-323, AND 37-32-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Cosmetologists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

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WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Cosmetologists be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of cosmetologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(f) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

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(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

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(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626."

Section 3. Section 2-15-1626, MCA, is amended to read:

"**2-15-1626. Board of cosmetologists.** (1) There is a board of cosmetologists.

(2) The board consists of *three licensed cosmetologists and one public member who is not engaged in the practice of cosmetology or electrology.* Each *licensed cosmetologist* member appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-31-302, MCA, is amended to read:

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"37-31-302. License required to practice, teach, or operate shop or school. (1) No person may practice or teach cosmetology without a license.

(2) No place may be used or maintained for the teaching of cosmetology for compensation except under a certificate of registration.

(3) No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license.

(4) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(5) No license may be issued until the inspection fees required in 37-31-312 have been paid."

Section 5. Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(2) (a) have *a* license to practice cosmetology issued by the department, been actively engaged as a beauty operator for 1 continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 500 hours of student teacher training; or

(b) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination."

Section 6. Section 37-31-306, MCA, is amended to read:

"37-31-306. Reciprocity. A person who is licensed to practice cosmetology *or is licensed as a manager-operator* in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists *or manager-operators* in that state."

Section 7. Section 37-31-307, MCA, is amended to read:

"37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture for a period of not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate

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of graduation from such a registered school. The temporary licenses are not renewable."

Section 8. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for *a* license *to practice* shall be held at a place and time specified by the board at least two times a year and not more than five times a year and for teacher's license once each year. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional teacher training at a registered school of cosmetology approved by the board.

(3) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 9. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors who are licensed to practice under this chapter, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment must pay an initial inspection fee of $25.

(3) The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetology establishment in the state."

Section 10. Section 37-31-323, MCA, is amended to read:

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"**37-31-323. Fees.** (1) Fees for licenses and certificates of registration shall be paid to the department not to exceed the following respective amounts prescribed by the board:

(a) A student enrolling in a registered cosmetology school shall pay a registration fee of $7 to the department.

(b) An applicant for examination to practice shall pay a fee of $40 at the time of the application.

(c) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of $8 for a temporary license to practice as an operator.

(d) An applicant for examination to teach shall pay a fee of $60 at the time of the application.

(e) An applicant for a manager-operator license shall pay a fee of $20 for the issuance of a license.

(f) An applicant for an itinerant license as a cosmetologist shall pay a fee of $100.

(g) A person, firm, partnership, or corporation owning, operating, or conducting a cosmetological salon shall pay the sum of $20 for the issuance of the certificate of registration.

(h) A person teaching or instructing cosmetology shall pay a fee of $20 for the issuance of a license.

(i) A person, firm, partnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of $100 for a certificate of registration.

(j) A person, firm, partnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of $100 for a certificate of registration.

(k) A person, firm, partnership, or corporation owning, operating, or conducting a teacher-training unit in a school of cosmetology shall pay the sum of $100 for a certificate of registration.

(l) An applicant for reciprocity licensure shall pay a fee of $100.

(m) Duplicate licenses or certificates of registration shall be issued on payment of $4 and proof of necessity.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology."

Section 11. Section 37-32-103, MCA, is amended to read:

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"**37-32-103. Exemptions.** Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist."

Section 12. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1981.

CHAPTER NO. 107

AN ACT TO REVISE THE DEFINITION OF CREDIT UNION MEMBERSHIP; AMENDING SECTION 32-3-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-304, MCA, is amended to read:

"**32-3-304. Membership defined.** (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests *or groups within a well-defined neighborhood, community, or rural district* or employees of a common employer and members of the immediate family of such persons."

Approved March 20, 1981.

CHAPTER NO. 108

AN ACT TO AMEND SECTION 46-18-221, MCA, TO PROVIDE THAT ADDITIONAL SENTENCES FOR CRIMES COMMITTED WITH A DANGEROUS WEAPON ARE TO RUN CONSECUTIVELY TO THE SENTENCE PROVIDED FOR THE OFFENSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-221, MCA, is amended to read:

"**46-18-221. Additional sentence for offenses committed with a dangerous weapon.** (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced

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to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense."

Approved March 20, 1981.

CHAPTER NO. 109

AN ACT PRESCRIBING CONDITIONS UNDER WHICH LAND IS PRESUMED TO BE ANNEXED AND MAY BE SO RECORDED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1.

Approved March 20, 1981.

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CHAPTER NO. 110

AN ACT TO PROVIDE FOR THE ADOPTION AND ENFORCEMENT BY THE DEPARTMENT OF LIVESTOCK OF RULES FOR THE INSPECTION, TESTING, TREATMENT, OR DISPOSITION OF ANIMALS OTHER THAN LIVESTOCK AFFECTED WITH OR WHICH MAY HAVE BEEN EXPOSED TO DISEASE; AMENDING SECTION 81-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-103, MCA, is amended to read:

"81-2-103. Adoption of rules. The department shall adopt and enforce rules for the inspection and tuberculin *testing* of dairy cattle or other animals and for the inspection, *testing*, treatment, or disposition of livestock *or other animals* affected with or which may have been exposed to infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this chapter or 81-20-101."

Approved March 20, 1981.

CHAPTER NO. 111

AN ACT TO REQUIRE OFFICIAL VACCINATION AGAINST BRUCELLOSIS OF FEMALE CATTLE OVER THE AGE OF 4 MONTHS, EXCEPT CATTLE WHICH HAVE BEEN SPAYED, BEFORE THEY MAY BE IMPORTED INTO THE STATE OF MONTANA; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Required brucellosis vaccination.** (1) Except as provided in subsections (2) and (3), no female cattle over the age of 4 months may be imported into the state of Montana for any purpose other than immediate slaughter unless they have been officially vaccinated, by a licensed veterinarian approved in his state to administer the vaccination, with a Brucella abortus vaccine approved by the veterinary biologics division, U.S. department of agriculture.

(2) Cattle being transported or moved through Montana with no intent to unload in the state are exempt from [this act]. In an emergency situation they may be unloaded in compliance with quarantine rules promulgated by the department of livestock pursuant to 81-2-102.

(3) Cattle which have been spayed are exempt from subsection (1).

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 81, chapter 2, and the provisions of Title 81, chapter 2, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1981.

CHAPTER NO. 112

AN ACT TO GENERALLY REVISE THE LAW CONCERNING THE ADMINISTRATION OF IRRIGATION DISTRICTS; REMOVING THE MONETARY LIMITS ON CERTAIN LEVIES; RAISING THE COMPENSATION AND EXPENSE ALLOWANCES OF CERTAIN BOARD MEMBERS; PROVIDING THAT VACANCIES BE FILLED UNTIL THE NEXT ELECTION; PROVIDING THAT DOCUMENTS BE FILED IN THE COUNTY WHEREIN THE OFFICE OF THE BOARD IS LOCATED; RAISING MINIMUM CONTRACT AMOUNT FOR WHICH BOARD MUST HAVE PRIOR TITLEHOLDER APPROVAL; REMOVING THE REQUIREMENT THAT ALL IRRIGATION WORKS BE DONE BY CONTRACT; AMENDING SECTIONS 85-7-205, 85-7-306, 85-7-1505, 85-7-1613, 85-7-1703, 85-7-1713, 85-7-1904, AND 85-7-1941, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-205, MCA, is amended to read:

"85-7-205. Duty of trustees, levy, and indebtedness. The board of trustees may develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of the decreed water right stream *and* may cover the expenses of such work *by* levy. Whenever waters of the stream under the irrigation district created by this part are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in the stream, the acre basis of levy shall be determined by the number of cubic feet of water per second owned by such party or parties at the rate of .025 cubic feet of water per second to the acre. The board may not issue bonds or incur any indebtedness other than warrant indebtedness under the limitations imposed by law."

Section 2. Section 85-7-306, MCA, is amended to read:

"85-7-306. Development of water supply — levy for expenses. The board of commissioners of such irrigation district shall have authority to develop the source of supply and increase the means of distribution of water to the end that all owners of water rights under *the* system shall receive the amount of water which can be beneficially used upon their lands within the district. *The board may levy* against each irrigable acre of land in the district on account of administrative expenses,

cost of maintenance and repairs, development of water supply, or enlargement of distribution facilities."

Section 3. Section 85-7-1505, MCA, is amended to read:

"85-7-1505. Compensation and expenses of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, *are entitled to compensation for board members as provided in 2-15-124 and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503,* and *for* their necessary expenses when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office."

Section 4. Section 85-7-1613, MCA, is amended to read:

"85-7-1613. Board of control — per diem and expenses. The members of the board of control, when sitting as a board *or when engaged in the business of the board, are entitled to compensation for board members as provided in 2-15-124 and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503,* and *for* their necessary expenses."

Section 5. Section 85-7-1703, MCA, is amended to read:

"85-7-1703. Vacancies among commissioners. In case of a vacancy in the board of commissioners, from any cause, such vacancy shall be filled *until the next regular or special election* by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land within the district, shall be a resident of the county in which the division of the district (or some portion of the division for which such commissioner is so elected) is situated, and shall hold office until his successor is elected and qualified."

Section 6. Section 85-7-1713, MCA, is amended to read:

"85-7-1713. Where documents to be filed and proceedings to be held. Where the lands of a district lie within more than one county, all petitions, papers, documents, or other instruments shall be filed and proceedings had in the county *in which the office of the board is established.*"

Section 7. Section 85-7-1904, MCA, is amended to read:

"85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire by purchase, lease, or contract water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

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(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district system of irrigation works.

(2) The board shall have the privilege, if desired, to contract with the owner or owners of such canals, reservoirs, dams, and other works so purchased and in the course of construction for the completion thereof.

(3) No purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of *$125,000, is* final or binding upon the district, *and no* sum *may* be paid *for such purchase, lease, or contract* without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts void."

Section 8. Section 85-7-1941, MCA, is amended to read:

"85-7-1941. Contracts. (1) The construction by the district of irrigation works *may* be done *by the district, by private owners, or* by contract.

(2) Before any contract is let, the board of commissioners shall *provide* surveys, plans, maps, and estimates, which shall include everything necessary to show the entire cost in detail of everything necessary to complete the work required to irrigate any of the lands in the district under the proposed system.

(3) Notice of any contract to be awarded for the construction of such works shall state where the plans and specifications may be seen and shall be published at least once a week for 3 successive calendar weeks in a newspaper published or of general circulation in the county where the office of the district is located. Sealed bids shall be called for in such published notice, and bids shall be opened in public."

Approved March 20, 1981.

CHAPTER NO. 113

AN ACT TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATION AND ENFORCEMENT BY THE ATTORNEY GENERAL OF THE OPENCUT MINING ACT; REPEALING SECTION 82-4-435, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Penalty — enforcement.** (1) A person who violates any of the provisions of this part or rules adopted thereunder shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an

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additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation, and the person may be enjoined from continuing such violation as provided in this section. These penalties are recoverable in an action brought in the name of the state of Montana by the attorney general in the district court having jurisdiction of the defendant or by mutual agreement of the parties involved, in the district court of the first judicial district. Penalty money shall be credited to the general fund.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

Section 2. **Repealer.** Section 82-4-435, MCA, is repealed.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to section 1.

Approved March 20, 1981.

CHAPTER NO. 114

AN ACT REVISING THE MEMBERSHIP AND SETTING FORTH THE POWERS AND DUTIES OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS' COMPENSATION INSURANCE; AMENDING SECTION 33-16-1007; AND REPEALING SECTION 33-16-1006, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-1007, MCA, is amended to read:

"33-16-1007. Classification and rating committee — membership — term. *(1) There is a classification and rating committee.*

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana, and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the division of workers' compensation who is an employee of the division and who shall be appointed by the administrator of the division.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

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(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 2. **Functions and powers of classification and rating committee.** The classification and rating committee shall:

(1) meet not less than semiannually to conduct its business;

(2) make the final determination regarding the establishment of all manual rules and classification;

(3) establish the advisory premium rates as provided for in 33-16-1005;

(4) publish such material and pamphlets as it considers appropriate; and

(5) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer. The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections.

Section 3. **Initial appointments.** When the committee is initially formed in 1981, appointments of members under subsection (2)(a) of 33-16-1007 shall fill terms as follows: one for 1 year, one for 2 years, and one for 3 years, as designated by the commissioner of insurance.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 33, chapter 16, part 10.

Section 5. **Repealer.** Section 33-16-1006, MCA, is repealed.

Approved March 20, 1981.

CHAPTER NO. 115

AN ACT AMENDING SECTION 76-13-413, MCA, TO CHANGE THE INTERNAL REFERENCE TO SECTION 76-13-407, PERTAINING TO RIGHT-OF-WAY CLEARANCE, TO SECTION 76-13-409 PERTAINING TO DUTIES OF PURCHASERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-413, MCA, is amended to read:

"76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money on or before the 15th day of

each month when required to do so under *76-13-409*, he must be notified by registered or certified mail that he is in noncompliance and be given 15 days to submit all money then due. If he fails to submit all money due within the required time, the department may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full or satisfactory arrangements for payments are made.

(2) If payment is not made within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid."

Approved March 20, 1981.

CHAPTER NO. 116

AN ACT TO PROVIDE THAT THE COMMISSIONER OF LABOR AND INDUSTRY SHALL SERVE AT THE PLEASURE OF THE GOVERNOR; AMENDING SECTION 2-15-1701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1701, MCA, is amended to read:

"2-15-1701. Department of labor and industry — head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) *The commissioner shall be appointed and serve as provided for directors in 2-15-111.*

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution."

Approved March 20, 1981.

CHAPTER NO. 117

AN ACT TO REQUIRE 25 SIGNATURES FOR THE NOMINATING PETITION FOR A TRANSPORTATION DISTRICT BOARD MEMBER; AMENDING SECTION 7-14-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-214, MCA, is amended to read:

"7-14-214. Election of members of transportation board. (1) Any registered elector in the district may file a petition of candidacy with

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the election administrator of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy *containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition shall be filed* as provided in 13-14-113.

(2) The names of the six candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election."

Approved March 20, 1981.

CHAPTER NO. 118

AN ACT MAKING IT UNLAWFUL FOR A MOTOR VEHICLE DEALER TO ISSUE MORE THAN ONE STICKER PER VEHICLE SALE; AND PROVIDING A PENALTY FOR IMPROPER USE THEREOF; AMENDING SECTION 61-4-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(a) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the division and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (1)(b) hereof, and a copy shall be retained by the dealer for his file. *It is unlawful for the dealer to issue more than one sticker per vehicle sale.*

(b) Within 4 working days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the sticker affixed to said vehicle by the dealer,

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and the division, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (1)(b) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of subsection(1)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within 3 days after their receipt.

(2) Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration."

Section 2. **Penalty.** Any person violating the provisions of 61-4-111 or 61-4-112 is guilty of a misdemeanor and subject to a fine of not less than $25 and not more than $100. Every violation of 61-4-111 and 61-4-112 is considered a separate offense.

Approved March 20, 1981.

CHAPTER NO. 119

AN ACT TO REMOVE THE REQUIREMENT THAT THE SUPERINTENDENT OF THE MONTANA VETERANS' HOME BE AN HONORABLY DISCHARGED VETERAN AND INSTEAD REQUIRE THAT VETERAN'S PREFERENCE BE GIVEN IN THE SELECTION OF THE SUPERINTENDENT; AMENDING SECTION 10-2-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veteran's preference. *In the selection of the* superintendent of the Montana veterans' home, *the department of institutions* shall *give preference to veterans as defined in 10-2-202.*"

Approved March 20, 1981.

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CHAPTER NO. 120

AN ACT TO ALLOW TRUSTEES OF ANY SCHOOL DISTRICT THAT OPERATES AN ADULT BASIC EDUCATION PROGRAM TO EARMARK A PORTION OF THE ADULT BASIC EDUCATION FUND END-OF-THE-YEAR CASH BALANCE AS A CASH RESERVE FUND FOR THE ENSUING SCHOOL FISCAL YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adult basic education fund cash reserve.** At the end of each school fiscal year, the trustees of any school district that operates an adult basic education program may designate what portion of the adult basic education fund end-of-the-year cash balance that is to be earmarked as cash reserve for the purpose of paying, whenever a cash flow shortage occurs, adult basic education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult basic education fund cash balance that is earmarked as cash reserve may not exceed 35% of the final adult basic education fund budget for the ensuing school fiscal year.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 7, part 7, and the provisions of Title 20 apply to section 1.

Approved March 20, 1981.

CHAPTER NO. 121

AN ACT TO ALLOW TRUSTEES OF A SCHOOL DISTRICT TO EARMARK A PORTION OF THE COMPREHENSIVE INSURANCE FUND END-OF-THE-YEAR CASH BALANCE AS A CASH RESERVE FUND FOR THE ENSUING SCHOOL FISCAL YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Insurance fund cash reserve.** At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the comprehensive insurance fund, as allowed by 2-9-212, to be earmarked as a cash reserve for the purpose of paying, whenever a cash flow shortage occurs, comprehensive insurance fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the comprehensive insurance fund cash balance that is earmarked as a cash reserve may not exceed 35% of the final comprehensive insurance fund budget for the ensuing school fiscal year.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 9, part 1, and the provisions of Title 20 apply to section 1.

Approved March 20, 1981.

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CHAPTER NO. 122

AN ACT TO REQUIRE INSURERS TO NOTIFY EMPLOYERS OF WORKERS' COMPENSATION BENEFITS THAT ARE ONGOING; AMENDING SECTION 39-71-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer. *(1)* Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial.

(2) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

Approved March 20, 1981.

CHAPTER NO. 123

AN ACT TO PROHIBIT PERSONS WHO ESTABLISH RESIDENCE OR BUSINESSES NEAR EXISTING AGRICULTURAL OR FARMING OPERATIONS, PLACES, ESTABLISHMENTS, OR FACILITIES FROM BRINGING NUISANCE SUITS BASED ON OBJECTION TO THE NORMAL OPERATION THEREOF; AMENDING SECTIONS 27-30-101 AND 45-8-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-30-101, MCA, is amended to read:

"27-30-101. Definition of nuisance. (1) Anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

(3) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or

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facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation."

Section 2. Section 45-8-111, MCA, is amended to read:

"45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense."

Approved March 23, 1981.

CHAPTER NO. 124

AN ACT TO INCREASE FROM $1,500 TO $7,500 THE VALUE OF AN ESTATE THAT MAY BE ADMINISTERED USING THE SMALL ESTATE SUMMARY PROCEDURE; AMENDING SECTIONS 72-3-1101, 72-3-1103, AND 72-3-1104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-3-1101, MCA, is amended to read:

"72-3-1101. Collection of property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing

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a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed *$7,500*;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

Section 2. Section 72-3-1103, MCA, is amended to read:

"72-3-1103. Summary procedure for disbursement and distribution. If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed *$7,500* or the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 3. Section 72-3-1104, MCA, is amended to read:

"72-3-1104. Closing by sworn statement of personal representative — termination of appointment. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed *$7,500* or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

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(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 4. **Applicability.** This act applies to decedents dying after the effective date of this act.

Approved March 23, 1981.

CHAPTER NO. 125

AN ACT TO REVISE APICULTURE PROVISIONS RELATING TO DEFINITIONS, REGISTRATION OF APIARIES, AND THE INCREASE IN THE NUMBER OF HIVES ON AN APIARY; AMENDING SECTIONS 80-6-101 THROUGH 80-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-101, MCA, is amended to read:

"80-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

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(8) "General apiary" means any apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, which may be used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the actual use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary thereon is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in [section 4].

(16) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift."

Section 2. Section 80-6-102, MCA, is amended to read:

"80-6-102. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary. *There are four classes of apiary registration. The conditions under which the department may issue certificates of registration for each class are specified in [sections 3 through 7].*

(2) Applications shall be made to the department for registration application blanks.

(3) Registration application blanks shall be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located *and, when the application is for a new apiary being*

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registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented to the apiary being located on his land;

(e) the date when the apiary was first established;

(f) the class of apiary registration for which application is being made; and

(g) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and *the* beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, the number of colonies of bees or size of the apiary authorized under the registration, *and the class of apiary authorized by the registration.*

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department shall be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.

(10) Any person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the same as provided in

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this part is guilty of a misdemeanor and upon conviction thereof is subject to the penalties set forth in 80-6-303.

(11) Nothing contained in this section or in [sections 3 through 7] shall be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to [the effective date of this act]. All such previously issued certificates of registration remain in effect for the period for which they were issued; subject, however, to forfeiture, lapse, abandonment, and termination in the manner provided by law."

Section 3. **General apiary registrations.** (1) In order to control, limit, and prevent the spread of bee diseases and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow of established apiaries, general apiaries registered to different persons on [the effective date of this act] must be located 3 or more miles apart, except as otherwise provided in this part. The department shall not register or issue a certificate of registration for any general apiary that is located less than 3 miles from a general apiary registered to another person, except as otherwise provided in this section.

(2) A person may register a general apiary that is situated less than 3 miles from another general apiary he has registered so long as the location of the general apiary being applied for is 3 or more miles from general apiaries registered to other persons.

(3) A general apiary may be registered even though it is less than 3 miles from any registered pollination apiary, landowner apiary, or hobbyist apiary.

(4) A person with an existing apiary that is located less than 3 miles from an existing general apiary registered to another person may register his apiary as a general apiary under the following conditions:

(a) his apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;

(b) his apiary is registered with the department as a general apiary as of July 1, 1981; and

(c) the registration of his apiary has not been forfeited or abandoned under the provisions of 80-6-102(9) or 80-6-104.

Section 4. **Pollination apiary registrations.** (1) The department may grant pollination apiary registrations to commercial seed and fruit producers or other commercial agricultural producers under the following conditions:

(a) (i) the applicant must own, lease, or rent the land upon which the pollination apiary is to be located and the applicant must use the land for the purpose of growing a commercial seed, fruit, or other crop which is dependent upon bees or other insects for pollination;

(ii) the applicant does not own the bees or the hives which are to be placed upon the pollination apiary; and

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(iii) the only purpose of the apiary is to pollinate a commercial agricultural crop.

(b) The applicant shall provide the department with all pertinent information necessary to determine if pollination apiaries are needed to pollinate the applicant's crop adequately.

(c) The department may refuse to register a pollination apiary based upon its own investigation of the matter, but if the department approves the application, it shall specify the number and location of pollination apiaries needed for the purpose of pollinating the applicant's commercial agricultural crop adequately.

(2) A pollination apiary registration is valid only for the time period specified by the department, and all pollination apiaries must be removed within 2 weeks after the full bloom period of the crop to be pollinated.

(3) No certificate of registration of a pollination apiary may be leased, assigned, or transferred and no person other than the pollination apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

Section 5. **Landowner apiary registrations.** (1) The department may grant landowner apiary registrations under the following conditions:

(a) The applicant must be a landowner, as defined in 80-6-101 and must own the land upon which the apiary will be located.

(b) The applicant must own the bees and the hives that will be placed on the apiary.

(c) The bees and the hives must be personally managed and operated by the applicant.

(2) No certificate of registration of a landowner apiary may be leased, assigned, or transferred and no person other than the landowner apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

Section 6. **Hobbyist apiary registrations.** (1) The department may grant hobbyist apiary registrations to hobbyist beekeepers under the following conditions:

(a) The applicant must not own a total of more than five hives, and all of the hives must be placed on the hobbyist apiary.

(b) The applicant must own the bees and the hives and must personally manage and operate the bees and the hives.

(c) Only one hobbyist registration is allowed an applicant and only two hobbyist apiary registrations are allowed a family unit.

(d) If the department determines that too many hobbyist apiaries are being registered within too close proximity of each other or of other established apiaries so that there is or may be danger of the spread of bee diseases or other contagious or infectious diseases among bees or apiaries or that there will be interference with the proper feeding and honey flow of

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established apiaries, the department may refuse to grant any further hobbyist registrations in the locality and area of the danger, in accordance with 80-6-102(6).

(2) No certificate of registration of a hobbyist apiary may be leased, assigned, or transferred and no person other than the hobbyist apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

Section 7. **Restrictions on apiary locations.** Pollination apiaries, landowner apiaries, and hobbyist apiaries may be located less than 3 miles from pollination apiaries, landowner apiaries, hobbyist apiaries, and general apiaries registered to other persons. General apiaries may be located within 3 miles of one another only under the provisions of [section 3].

Section 8. Section 80-6-103, MCA, is amended to read:

"80-6-103. Changing locations — enlarging or selling apiaries. (1) An owner of an established registered apiary may not change the location of the apiary without first receiving from the department authorization to establish the new apiary. In making the application, he shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the apiary are sold to the purchaser.

(3) No person may increase the number of hives on an apiary to exceed the number of hives authorized by his certificate of registration for that apiary, except that a person may increase the number of hives on a general apiary beyond the number authorized by the certificate of registration in order to protect his bees during adverse weather or crop conditions or to protect his bees and hives from bears or other predators. A person may also enlarge a general apiary during the spring buildup and in the fall after the end of the honey season in order to gather his bees for shipment out of the state or to winter his bees on that apiary.

(4) A person enlarging an apiary so as to exceed the number of hives *herein allowed is guilty of a misdemeanor and* is subject to the penalties *set forth* in 80-6-303."

Section 9. **Codification instruction.** Sections 3 through 7 are intended to be codified as an integral part of Title 80, chapter 6, part 1, and the provisions of Title 80, chapter 6, apply to sections 3 through 7.

Approved March 23, 1981.

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CHAPTER NO. 126

AN ACT TO AMEND SECTION 33-16-103, MCA, CONCERNING RATING ORGANIZATIONS, BY DELETING THE EXCEPTION OF TITLE INSURANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-103, MCA, is amended to read:

"33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) life insurance;

(2) disability insurance;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies."

Approved March 23, 1981.

CHAPTER NO. 127

AN ACT TO PROHIBIT AN ENTRY IN THE MARGIN OF THE RECORD AS A METHOD TO RECORD THE RELEASE OF A REAL ESTATE MORTGAGE; AMENDING SECTION 71-1-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-211, MCA, is amended to read:

"71-1-211. Satisfaction of mortgage — record thereof. *(1) A* mortgage shall be discharged upon the record thereof by the county clerk in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as in this code prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

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(2) Every such certificate and the proof and acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book *and page* containing such record in the *mortgagor and mortgagee indexes as to the discharge of such mortgage.*"

Approved March 23, 1981.

CHAPTER NO. 128

AN ACT AUTHORIZING INSURANCE AGENTS TO EXTEND CREDIT TO POLICYHOLDERS AND ESTABLISHING INTEREST RATES ALLOWED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Extension of credit to policyholder.** Notwithstanding any other provision of law, an insurance agent, as defined in 33-17-102, may extend credit to a policyholder in connection with the issuance or servicing of any policy procured or negotiated by the agent, but any credit so extended must satisfy one of the following requirements:

(1) if credit is extended to a policyholder for not more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, no interest may be charged; or

(2) if credit is extended to a policyholder for more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not more than 1 ½ % a month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument signed by the policyholder, any interest charged for such credit shall be clearly stated in the instrument and may not exceed the legal rate of interest authorized in 31-1-107.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, apply to section 1.

Approved March 23, 1981.

CHAPTER NO. 129

AN ACT TO AUTHORIZE COMMERCIAL BANKS AND SAVINGS BANKS TO SELL CREDIT LIFE AND DISABILITY INSURANCE ON LOANS TO THEIR BORROWERS; AMENDING SECTIONS 32-1-105 AND 32-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-105, MCA, is amended to read:

"32-1-105. Commercial bank defined. The term "commercial bank" means any bank authorized by law to:

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(1) receive deposits of money;

(2) deal in commercial paper or make loans thereon;

(3) lend money on real or personal property;

(4) sell credit life and disability insurance on loans to its borrowers;

(5) discount bills, notes, or other commercial papers; and

(6) buy and sell securities, gold and silver bullion, foreign coins, or bills of exchange."

Section 2. Section 32-1-106, MCA, is amended to read:

"32-1-106. Savings bank defined. The term "savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may:

(1) loan and invest the funds thereof;

(2) receive deposits of money; loan, invest, and collect the same with interest; and repay depositors with or without interest;

(3) sell credit life and disability insurance on loans to its borrowers;

(4) invest said funds and moneys in such property, securities, and obligations as may be prescribed by this chapter; and

(5) declare and pay:

(a) dividends on its general deposits; and

(b) a stipulated rate of interest on deposits made for a stated period or upon special terms."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1981.

CHAPTER NO. 130

AN ACT TO ALLOW MUNICIPALITIES TO SELECT THE ANNEXATION PROCEDURE APPROPRIATE TO EACH ANNEXATION SITUATION; AMENDING SECTIONS 7-2-4204, 7-2-4304, 7-2-4408, 7-2-4505, 7-2-4609, AND 7-2-4718, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4204, MCA, is amended to read:

"7-2-4204. Applicability of part. *(1)* When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 2. Section 7-2-4304, MCA, is amended to read:

"7-2-4304. Applicability of part. *(1)* When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 3. Section 7-2-4408, MCA, is amended to read:

"7-2-4408. Applicability of part. *(1)* When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 4. Section 7-2-4505, MCA, is amended to read:

"7-2-4505. Applicability of part. *(1)* When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Section 5. Section 7-2-4609, MCA, is amended to read:

"7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method *that the municipal governing body may in its discretion choose to use* for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

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(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated."

Section 6. Section 7-2-4718, MCA, is amended to read:

"**7-2-4718. Construction.** *(1)* The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part."

Approved March 23, 1981.

CHAPTER NO. 131

AN ACT TO ALLOW THE BOARDS OF TRUSTEES OF RURAL COOPERATIVE UTILITIES TO CHOOSE A PLACE FOR MEMBERSHIP MEETINGS WHEN NO PLACE IS SPECIFIED IN THE BYLAWS; PROVIDING A NEW QUORUM REQUIREMENT FOR MEMBERSHIP MEETINGS; AMENDING SECTION 35-18-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-303, MCA, is amended to read:

"**35-18-303. Meetings of members — general and special — place — notice — quorum — voting.** (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held *at such place as shall be determined by the board of trustees.*

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person *or 50 members present in person, whichever is fewer,* shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage *or number* of the members for a quorum. If less than a quorum is present at any meeting, a

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majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members."

Approved March 23, 1981.

CHAPTER NO. 132

AN ACT TO INCREASE THE SPECIFIC DOLLAR LIMITATION ON THE MAXIMUM AMOUNT OF INSURANCE RETAINED ON A SINGLE RISK BY A FARM MUTUAL INSURER FROM $35,000 to $50,000; AMENDING SECTION 33-4-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-502, MCA, is amended to read:

"33-4-502. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed 10% of the admitted assets of the insurer or *$50,000*, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against."

Approved March 23, 1981.

CHAPTER NO. 133

AN ACT TO PROHIBIT TRANSPORT ON THE HIGHWAYS OF THE STATE OF MORE THAN 10 CONIFEROUS TREES WITHOUT A BILL OF SALE; AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unlawful transportation of trees.** (1) No person may transport on the highways of this state more than 10 coniferous trees without having in his possession a bill of sale showing his ownership of the trees. The bill of sale shall specify:

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(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents, provided that agent has in his possession a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested;

(d) the transportation of coniferous trees by a common carrier.

(3) A person who violates this section shall be punished by a fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

Approved March 23, 1981.

CHAPTER NO. 134

AN ACT INCREASING CERTAIN LIMITS OF DISCRETIONARY AUTHORITY OF COUNTY OFFICIALS TO ACT IN FISCAL MATTERS IN ORDER TO ADJUST FOR INFLATION; AMENDING SECTIONS 7-5-2301, 7-5-2302, 7-5-2303, AND 7-7-2101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of $10,000 or, for the construction of any building, road, or bridge for which must be paid a sum in excess of $10,000 *or for the repair or maintenance of any building, road, or bridge for which must be paid a sum in excess of $25,000* shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published in the official newspaper of the county at least once a week for 3 consecutive weeks before the date fixed therein for receiving bids.

(3) Every such contract shall be let to the lowest and best responsible bidder."

Section 2. Section 7-5-2302, MCA, is amended to read:

"7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum in excess of *$10,000* but less than *$25,000*, bids shall be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of prospective suppliers whose names are listed as provided herein, which solicitation shall contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, such listing may be canceled.

(2) The governing body of the county shall let such contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301."

Section 3. Section 7-5-2303, MCA, is amended to read:

"7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than *$25,000*.

(2) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301."

Section 4. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 18% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding *$150,000* without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414."

Approved March 23, 1981.

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CHAPTER NO. 135

AN ACT TO REVISE AND CLARIFY THE LAWS RELATING TO THE POWER OF A DISTRICT SUPERINTENDENT OF SCHOOLS OR A PRINCIPAL TO SUSPEND A PUPIL; AMENDING SECTIONS 20-4-302, 20-4-402, 20-4-403, AND 20-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-302, MCA, is amended to read:

"20-4-302. Power of teacher or principal over pupils — undue punishment. (1) Any teacher or principal shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a principal shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the principal's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, principal, or of the authority of the school, the teacher or principal may administer corporal punishment without giving such notice.

(2) Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause and to administer corporal punishment in the presence of a witness, without undue anger. Where *either* a district superintendent or *a school* principal is employed, only *the superintendent or principal* shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action.

(3) It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

(4) Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than $100."

Section 2. Section 20-4-402, MCA, is amended to read:

"20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal shall be the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

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(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit such selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit such selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause any pupil of the district;

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent or county superintendents when reporting for a joint district, immediately after the conclusion of the school instructional year and before July 10; and

(8) perform any other duties in connection with the district as the trustees may prescribe."

Section 3. Section 20-4-403, MCA, is amended to read:

"20-4-403. Powers and duties of principal. *(1)* Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed."

Section 4. Section 20-5-202, MCA, is amended to read:

"20-5-202. Suspension and expulsion. As provided in 20-4-302, 20-4-402, *and 20-4-403,* any pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees."

Approved March 23, 1981.

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CHAPTER NO. 136

AN ACT TO REPEAL SECTIONS 50-35-101 THROUGH 50-35-105, MCA, REQUIRING LABELING OF IMPORTED MEAT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 50-35-101 through 50-35-105, MCA, are repealed.

Approved March 23, 1981.

CHAPTER NO. 137

AN ACT TO PROVIDE FOR THE ADMINISTRATION OF THE RESIDENTIAL CONSERVATION SERVICE IN MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to provide for administration by the state of the residential conservation service program mandated by the National Energy Conservation Policy Act of 1978 (P.L. 95-619). Implementation of this program will provide the citizens of Montana with a means of determining the need for and the cost-effectiveness of various energy conservation measures in their homes. It will also provide procedures for obtaining financing for installation of necessary energy conservation measures.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of natural resources and conservation.

(2) "Residential conservation service" means a program, in which utilities must participate, that provides for energy audits and installation and financing of energy conservation measures.

(3) "Utility" means a person, individual, group, firm, partnership, corporation, cooperative, association, or other organization or entity supplying:

(a) 10 billion cubic feet or more of natural gas a year in sales; or

(b) 750 million kilowatt hours or more of electricity a year in sales; or

(c) less natural gas or electricity than in subsection (a) or (b) that elects by written notice to the department to participate in the residential conservation service program and agrees to comply with the residential conservation service rules of the department and of the United States department of energy.

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Section 3. **Residential conservation service established.** (1) There is a residential conservation service established in Montana under the National Energy Conservation Policy Act of 1978, which shall be administered by the department according to the provisions of P.L. 95-619 and [this act].

(2) [This act] is supplemental to the provisions of 15-32-107 administered by the public service commission.

Section 4. **General powers of department.** The department may:

(1) use existing staff to administer [this act];

(2) provide and maintain a list of qualified contractors, lenders, and suppliers;

(3) adopt rules for the purpose of establishing:

(a) qualification criteria for contractors, lenders, and suppliers;

(b) procedures for applications for energy audits and financing for energy conservation measures;

(c) guidelines for and monitoring of the residential conservation program;

(d) grievance procedures for the residential conservation service.

Approved March 23, 1981.

CHAPTER NO. 138

AN ACT TO ALLOW TRUSTEES OF A SCHOOL DISTRICT TO ESTABLISH A RESERVE FUND FOR THE PURPOSE OF PAYING ANY ACCUMULATED SICK LEAVE THAT A NONTEACHING SCHOOL DISTRICT EMPLOYEE IS ENTITLED TO UPON TERMINATION OF EMPLOYMENT WITH THE DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reserve fund for payment of accumulated sick leave — special levy to establish.** (1) The trustees of any school district may establish a reserve fund for the purpose of paying any accumulated amount of sick leave that a nonteaching school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618. Such a reserve fund may be used only for the stated purpose of this section.

(2) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year cash balance to establish such a reserve fund.

(3) The maximum amount in a reserve fund established under the provisions of subsections (1) and (2) may not exceed 30% of the total school

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district liability for accumulated sick leave of nonteaching school district employees on January 15 of the preceding school fiscal year.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 9, part 5, and the provisions of Title 20 apply to section 1.

Approved March 23, 1981.

CHAPTER NO. 139

AN ACT TO REVISE AND CLARIFY THE LAW RELATING TO THE PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS; AMENDING SECTIONS 18-2-401 AND 18-2-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. *Unless the context requires otherwise, in this part the following definitions apply:*

(1) "Labor" is hereby defined to be all services performed in the construction, repair, or maintenance of all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) A "bona fide resident of Montana" is hereby declared to be a person who, at the time of his employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(5) (a) "Standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed," means those wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification, or type of worker needed to complete a contract under this part.

(b) When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages, including fringe

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benefits for health and welfare and pension contributions and travel allowance provisions, shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification, or type of worker needed to complete the contract."

Section 2. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works — wages — federal exception. (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the *bid specification and the* contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality in which the work is being performed.

(2) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(3) Failure to include the provisions required by [section 4] in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

Section 3. **Notice.** When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project shall be sent to the department. However, in the case of projects that amount to $50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court as provided in 18-2-407 does not begin until the public contracting agency notifies the department of its acceptance of the public works project.

Section 4. **Bid specification and contract to contain prevailing wage rate.** All bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project.

Section 5. **Submission of payroll records.** If a complaint is filed with the department alleging noncompliance with [section 4], the department may require the project to submit to it certified copies of the payroll records for workers employed on that project.

Section 6. **Enforcement.** If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to [section

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5], the commissioner or his authorized representative may issue subpoenas compelling the production of those records.

Section 7. **Codification instruction.** It is intended that sections 3 through 6 be codified as an integral part of Title 18, chapter 2, part 4, and the provisions contained in Title 18, chapter 2, part 4, apply to sections 3 through 6.

Approved March 23, 1981.

CHAPTER NO. 140

AN ACT TO PROVIDE AUTHORITY FOR A CREDIT UNION TO MAINTAIN ADDITIONAL OFFICES; TO ALLOW A HEARING; AND AMENDING SECTION 32-3-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-104, MCA, is amended to read:

"32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of business regulation.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union shall be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing shall be to determine whether a compelling reason exists for disapproval of the additional office."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 25, 1981.

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CHAPTER NO. 141

AN ACT TO ALLOW A YOUTH UNDER JURISDICTION OF THE YOUTH COURT TO PETITION FOR PLACEMENT IN A HOME OTHER THAN A YOUTH GUIDANCE HOME; AMENDING SECTION 41-5-921, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-921, MCA, is amended to read:

"41-5-921. Petition by person under twenty-one to be placed in district youth guidance home or any other court-approved home. Any person under the age of 18 years or any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home *or in any other home approved by the court* for any period of time up to said person's 21st birthday."

Approved March 25, 1981.

CHAPTER NO. 142

AN ACT LIMITING MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BY REQUIRING CERTAIN EMPLOYEES TO AFFIRMATIVELY EXERCISE THE OPTION TO BECOME MEMBERS AND ELIMINATING THE ONE-YEAR RULE FOR CERTAIN STUDENT EMPLOYEES; AMENDING SECTION 19-3-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

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(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of *120* working days in any fiscal year *who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment*;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

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(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed by the legislature during the legislative session who do not file with the board an election in writing to become members;

(13) students of any public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city whichever is later;

(16) all former members receiving a retirement allowance other than as a beneficiary serving in employment if that employment does not exceed 60 working days in any fiscal year. These former members must be reinstated into membership on the 61st working day in any fiscal year unless they elect to return to membership prior to that day."

Approved March 25, 1981.

CHAPTER NO. 143

AN ACT TO REMOVE THE FILING FEE FOR FILING THE COMPLETE CORNER RECORD UNDER THE CORNER RECORDATION ACT; AMENDING SECTION 70-22-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-22-109, MCA, is amended to read:

"70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner shall receive the completed

corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed shall be placed by the clerk near that same corner on a cross-index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee."

Approved March 25, 1981.

CHAPTER NO. 144

AN ACT AMENDING SECTION 5-2-301, MCA, TO PROVIDE FOR REIMBURSEMENT TO LEGISLATORS FOR THREE ADDITIONAL ROUND TRIPS TO THEIR PLACE OF RESIDENCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to $40 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) In addition to the mileage allowance provided for in subsection (3), legislators are entitled to two additional round trips to their place of residence during each regular session upon submittal of an appropriate claim for such mileage reimbursement to the office of legislative council.

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(5) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session."

Approved March 25, 1981.

CHAPTER NO. 145

AN ACT TO PERMIT THE QUALIFICATION OF SERVICE TIME BETWEEN THE PUBLIC EMPLOYEES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Qualification of service from other Montana public retirement systems.** (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the highway patrolmen's, sheriffs', game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the public employees' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(3) Service qualified under subsections (1) and (2) may not be used for qualification under 19-3-507.

Section 2. **Qualification of service from other Montana public retirement systems.** (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', sheriffs', game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the highway patrolmen's retirement system as determined by the board based on his compensation earned as a member of the former system and

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the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the highway patrolmen's retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrolmen's retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

Section 3. **Qualification of service from other Montana public retirement systems.** (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the sheriffs' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

Section 4. **Qualification of service from other Montana public retirement systems.** (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, sheriffs', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the game wardens' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer

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contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

Section 5. **Qualification of service from other Montana public retirement systems.** (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, sheriffs', or game wardens' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the municipal police officers' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

Section 6. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 19, chapter 6, part 3, and the provisions of Title 19, chapter 6, apply to section 2.

(3) Section 3 is intended to be codified as an integral part of Title 19, chapter 7, part 3, and the provisions of Title 19, chapter 7, apply to section 3.

(4) Section 4 is intended to be codified as an integral part of Title 19, chapter 8, part 3, and the provisions of Title 19, chapter 8, apply to section 4.

(5) Section 5 is intended to be codified as an integral part of Title 19, chapter 9, part 4, and the provisions of Title 19, chapter 9, apply to section 5.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1981.

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CHAPTER NO. 146

AN ACT TO CLARIFY THE AUTHORITY OF MUNICIPAL AND COUNTY GOVERNING BODIES AND TO PROVIDE FOR ADMINISTRATION OF RURAL SPECIAL IMPROVEMENT DISTRICTS WHEN THE PROPERTY HAS BECOME PART OF AN INCORPORATED CITY OR TOWN.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of management and control of district to city or town.** (1) When a special improvement district has been created in accordance with the provisions of this part in any county of the state and the property contained therein subsequently becomes a part of the boundaries of an incorporated city or town, the board of county commissioners or the multicounty district trustees, as the case may be, may transfer the operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon.

(2) A city or town may accept the responsibility to operate and control such a district.

(3) An agreement for transfer of responsibilities from a county to a city or town must be properly executed in writing and must be approved by both governing bodies. Until an agreement is effective, the board of county commissioners or the multicounty district trustees, as the case may be, shall retain operation, control, and management of the district. The date of transfer of operation, control, and management is the date the agreement is fully effective or the date of transfer specified in the agreement, whichever is later.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to section 1.

Approved March 25, 1981.

CHAPTER NO. 147

AN ACT TO AMEND THE TAX INCREMENT LAWS FOR URBAN RENEWAL TO ALLOW TAX INCREMENT FINANCING TO BE USED FOR URBAN REDEVELOPMENT; PROVIDING THAT WHENEVER CHANGES BY LAW OF THE TAXABLE VALUATION OF THE URBAN RENEWAL AREA OCCUR, THE VALUATION MAY BE RECALCULATED TO REFLECT THE VALUATION THAT THE AREA WOULD HAVE HAD IF THE CHANGE HAD BEEN IN EFFECT AT THE INCEPTION OF THE URBAN RENEWAL AREA; AMENDING SECTIONS 7-15-4288 AND 7-15-4293, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs which may be paid by tax increment financing. The tax increments may be used by the municipality to pay

the following costs of or incurred in connection with an urban renewal project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred; *and*

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233."

Section 2. Section 7-15-4293, MCA, is amended to read:

"**7-15-4293. Adjustment of base taxable value following change of law.** If the base taxable value of an urban renewal area is affected after its original determination by a statutory, *administrative, or judicial* change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, *or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established,* the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the *change* been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287."

Approved March 25, 1981.

CHAPTER NO. 148

AN ACT TO ALLOW HIGH SCHOOL SENIORS TO GRADUATE UP TO 5 DAYS BEFORE COMPLETION OF THE REQUIRED 180 PUPIL-INSTRUCTION DAYS IN THE SCHOOL YEAR WITHOUT A LOSS OF STATE FOUNDATION FUNDS TO THE SCHOOL DISTRICT; AMENDING SECTIONS 20-1-301 AND 20-9-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-301, MCA, is amended to read:

"**20-1-301. School fiscal year.** The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, *except that 175 days of*

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pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county."

Section 2. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for such school shall be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in 20-9-311, in a given school year will no longer be considered a special full-time pupil in the ensuing school year (the superintendent of public instruction may grant one ANB for such pupil for the ensuing school year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the

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equivalent amount of secondary school enrollment *or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the twelfth grade.* The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1981.

CHAPTER NO. 149

AN ACT TO REESTABLISH THE BOARD OF SANITARIANS UNDER EXISTING STATUTORY AUTHORITY AND RULES; TO PROVIDE THAT ONE BOARD MEMBER SHALL BE FROM THE PUBLIC; TO ESTABLISH MINIMUM EDUCATIONAL STANDARDS; TO INCREASE THE RECIPROCITY AND RENEWAL FEE; TO PROVIDE FOR A BIENNIAL RENEWAL PERIOD; TO PROVIDE EXPANDED DISCIPLINARY GUIDELINES; AMENDING SECTIONS 2-8-103, 2-15-1631, 37-40-302 THROUGH 37-40-304, 37-40-307, AND 37-40-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of sanitarians is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

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(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

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(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

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(5) The following agency terminates on July 1, 1987: the board of sanitarians, department of professional and occupational licensing, created by 2-15-1631."

Section 3. Section 2-15-1631, MCA, is amended to read:

"**2-15-1631. Board of sanitarians.** (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor *with the consent of the senate.* Each member *must* be a resident of this state, *and two of the members must be* registered *sanitarians. One member must be from the public and not a sanitarian who shall represent the interests of the public at large.* Each *sanitarian* member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-40-302, MCA, is amended to read:

"**37-40-302. Application — examination — certificate.** (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must *possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college* and must pass an examination given at a time and place set by the board.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates shall be entitled to append to their name the initials "R.S."."

Section 5. Section 37-40-303, MCA, is amended to read:

"**37-40-303. Licensing sanitarians from other states.** The department shall issue a license without examination to a person who applies to the department, pays a fee of *$50,* and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state."

Section 6. Section 37-40-304, MCA, is amended to read:

"**37-40-304. Fees — renewal.** (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

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(2) A registered sanitarian may renew his license by paying *a biennial* fee set by the board, not to exceed *$80.*

(3) Renewal fees are due July 1 of *odd-numbered years.* If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

Section 7. Section 37-40-307, MCA, is amended to read:

"37-40-307. Sanitarian practicing prior to effective date. A person having practiced as a sanitarian, as defined by 37-40-101(5), for 1 year prior to July 1, *1981,* may be registered as a sanitarian upon making application and paying the required fee."

Section 8. Section 37-40-311, MCA, is amended to read:

"37-40-311. Suspension or revocation of license. *(1)* The board may suspend or revoke a license for the following reasons:

(a) unprofessional conduct;

(b) fraud and deceit in obtaining a license;

(c) gross negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, subscribed, and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within 3 months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or suspend, refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board."

Section 9. **Coordination with SB Bill 412.** If SB Bill 412 introduced in the 47th Legislature is passed and approved, sections 5 and 6 or

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other sections of this act that amend sections 37-40-303 and 37-40-304 are void and of no effect.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1981.

CHAPTER NO. 150

AN ACT TO CLARIFY THE ROLE OF THE RADIOLOGIC TECHNOLOGIST IN MONTANA; AMENDING SECTION 37-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-14-301, MCA, is amended to read:

"37-14-301. Limitation of license authority — exemptions. (1) No person may apply x-ray radiation to a person unless licensed under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the *specific direction* of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intraarterial or intracatheter injections. An uncertified radiologic technologist or a permitholder under 37-14-306 may not perform any of the activities listed in this subsection."

Approved March 26, 1981.

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CHAPTER NO. 151

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FALSE CLAIMS TO PUBLIC AGENCIES AND TO CREATE CIVIL PENALTIES FOR PERSONS MAKING FALSE CLAIMS TO PUBLIC AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **False claims to public agencies.** (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractors authorized to allow or pay claim presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $150, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

Section 2. **Liability for false claims.** (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the state as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be sued for in the same suit.

Section 3. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 45, chapter 7, part 2, and the provisions of Title 45, chapter 7, part 2, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 17, chapter 8, part 2, and the provisions of Title 17, chapter 8, part 2, apply to section 2.

Approved March 26, 1981.

CHAPTER NO. 152

AN ACT TO AMEND SECTION 16-3-306, MCA, TO PREVENT THE LICENSING OF CERTAIN BUSINESSES SELLING ALCOHOL IN CLOSE PROXIMITY TO SCHOOLS AND PLACES OF WORSHIP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-306, MCA, is amended to read:

"16-3-306. Proximity to churches and schools restricted. *(1) Except as provided in subsections (2) and (3), no* retail *license* may *be*

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issued pursuant to this code to any business or enterprise whose premises *are* within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if *the licensee does not relocate his entrances any closer than the existing entrances and if* the establishment*:*

(a) was located on the site before the place of worship or school opened*;* or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

CHAPTER NO. 153

AN ACT TO PROVIDE FOR THE RESCHEDULING OF SCHOOL ELECTIONS THAT ARE CANCELED DUE TO DECLARATION OF A STATE OF EMERGENCY OR DISASTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rescheduling of school election canceled due to declaration of state of emergency or disaster.** If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 20, part 1, and the provisions of Title 20 apply to section 1.

Approved March 26, 1981.

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CHAPTER NO. 154

AN ACT TO REESTABLISH THE BOARD OF NURSING HOME ADMINISTRATORS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Nursing Home Administrators and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Nursing Home Administrators be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of nursing home administrators is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

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(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

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(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

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CHAPTER NO. 155

AN ACT TO REESTABLISH THE BOARD OF CHIROPRACTORS UNDER EXISTING STATUTORY AUTHORITY AND RULES; ADDING A PUBLIC MEMBER TO THE BOARD; AMENDING THE CONTINUING EDUCATION REQUIREMENT; AMENDING SECTIONS 2-8-103, 2-15-1613, AND 37-12-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Chiropractors and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Chiropractors be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of chiropractors is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(e) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

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(f) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

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(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of chiropractors, department of professional and occupational licensing, created by 2-15-1613."

Section 3. Section 2-15-1613, MCA, is amended to read:

"**2-15-1613. Board of chiropractors.** (1) There is a board of chiropractors.

(2) The board consists of *four* members appointed by the governor. *Three* members *must* be practicing chiropractors of integrity and ability who *are* residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. No two members *may* be graduates

of the same school or college of chiropractic. *One member must be a representative of the public who is not engaged in the practice of chiropractic.*

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-12-307, MCA, is amended to read:

"37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee of not more than $50, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

CHAPTER NO. 156

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SELL OR OTHERWISE DISPOSE OF WATER PROJECTS AND ASSOCIATED WORKS AND PROPERTY AFTER A DETERMINATION OF MARKET VALUE; AMENDING SECTIONS 85-1-210, 85-1-211, AND 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-210, MCA, is amended to read:

"85-1-210. Disposal of property by department. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department, *with the approval of the board,* may sell or otherwise dispose of a *water project,* after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof, *if any,* and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. *The department shall make a determination of the market value of the water project prior to its sale or other disposition.*"

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Section 2. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(5) Subject to the approval of the board under 85-1-202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, or property or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of rights-of-way, easements, or property to be sold, transferred, abandoned, or otherwise disposed of."

Section 3. Section 85-6-109, MCA, is amended to read:

"85-6-109. Operation of projects with water users' association. (1) As used in this section, "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the

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board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works is located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, *sell, or otherwise dispose of* a project which involves *a water users'* association, the department shall notify the association. *Before the department may take further action to abandon, sell, or otherwise dispose of a project which involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition which is signed by stockholders of the association representing 66 ⅔% or more of the issued and outstanding stock of the association.* If, within 30 days of receipt of the *final proposal* of abandonment, *sale, or other disposal*, stockholders of the association representing 15% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, *sold, or otherwise disposed of* without the consent of the legislature."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

CHAPTER NO. 157

AN ACT TO REMOVE STATUTORY PROVISIONS GRANTING INTERESTS IN STATE LAND TO THE FEDERAL GOVERNMENT; AMENDING SECTIONS 77-2-304, 77-2-327, AND 77-2-343, MCA; REPEALING SECTIONS 77-2-108 AND 77-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-304, MCA, is amended to read:

"77-2-304. Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state lands,

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except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof."

Section 2. Section 77-2-327, MCA, is amended to read:

"77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this part."

Section 3. Section 77-2-343, MCA, is amended to read:

"77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304, and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern."

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Section 4. **Repealer.** Sections 77-2-108 and 77-2-316, MCA, are repealed.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

CHAPTER NO. 158

AN ACT TO AMEND THE LAW RELATING TO THE DETAINER OF ADULTERATED OR MISBRANDED ARTICLES; AMENDING SECTION 50-31-509, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-509, MCA, is amended to read:

"50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. *The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.*

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded *and a disposal agreement is not executed as provided in subsection (1), the agent* shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and

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after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid."

Approved March 26, 1981.

CHAPTER NO. 159

AN ACT TO PROVIDE FOR INTEREST AND A PENALTY ON DELINQUENT PROPERTY TAXES OWED ON MOBILE HOMES AND HOUSETRAILERS THAT ARE NOT TAXED AS IMPROVEMENTS; AMENDING SECTIONS 15-24-202 AND 15-24-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-202, MCA, is amended to read:

"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. *(1)* The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206(2). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed.

(2) Tax due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes *and any interest and penalty owed* are paid in full. An owner shall then display the sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer."

Section 2. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by

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the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202; as amended, except livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Approved March 26, 1981.

CHAPTER NO. 160

AN ACT AMENDING SECTION 85-2-306, MCA, TO EXCEPT FROM THE WATER APPROPRIATION PERMIT PROCESS THE REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN IMPOUNDMENT OR PIT AND APPROPRIATING WATER FOR USE BY LIVESTOCK IF THE SOURCE OF WATER IS OTHER THAN A PERENNIAL FLOWING STREAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, *within 60 days after* constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. *Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit.* If the department determines after *a hearing* that the rights of other appropriators have been or will be adversely affected, it may *revoke the permit or* require the *permittee* to modify the impoundment or pit and *may then make* the permit subject to such terms, conditions,

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restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(3) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Approved March 26, 1981.

CHAPTER NO. 161

AN ACT TO EXEMPT FROM THE BANKRUPTCY ESTATE ONLY THE PROPERTY EXEMPT FROM EXECUTION OF JUDGMENT UNDER STATE LAW.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exempt property.** No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except property exempt from execution of judgment as provided in Title 25, chapter 13, part 6, MCA.

Approved March 26, 1981.

CHAPTER NO. 162

AN ACT TO REPEAL PROVISIONS RELATING TO EXPANDED CHILD DAY-CARE ASSISTANCE AND ITS SLIDING SCALE METHOD OF PAYMENT; REPEALING SECTION 53-4-516, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 53-4-516, MCA, is repealed.

Section 2. **Effective date.** This act is effective on July 1, 1981.

Approved March 26, 1981.

CHAPTER NO. 163

AN ACT AMENDING SECTION 32-1-362, MCA, TO ALLOW STATE BANKS TO BRANCH IF NATIONAL BANKS ARE ALLOWED THAT PRIVILEGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-362, MCA, is amended to read:

"32-1-362. National bank powers extended to state banks. *(1)* With the consent of the department, every bank organized under the

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laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that, *subject to subsection (2),* such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

(2) If the United States congress allows national banks to establish branches without regard to state prohibitions, a bank organized under the laws of Montana may, with the consent of the department, establish a branch under the same conditions allowed national banks, despite the restrictions imposed by 32-1-372."

Approved March 27, 1981.

CHAPTER NO. 164

AN ACT TO CLARIFY WHO MAY AUTHORIZE A PUBLIC DISPLAY OF FIREWORKS; AMENDING SECTION 50-37-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-107, MCA, is amended to read:

"50-37-107. Supervised public display of fireworks authorized. (1) The state fire marshal *or* the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the municipality in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the chief of the fire department or other officer designated by the governing body of the municipality after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

(6) The term "municipalities" includes cities and incorporated towns."

Approved March 27, 1981.

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CHAPTER NO. 165

AN ACT TO REMOVE THE QUALIFICATION THAT A PERSON MUST BE A CITIZEN OF THE UNITED STATES TO BE CERTIFIED AS A TEACHER IN MONTANA; AMENDING SECTION 20-4-104, MCA; AND REPEALING SECTION 20-4-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is of good moral and professional character.

(d) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(e) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America, The Constitution of the State of Montana, and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)*(c)* and the requirement for a specialist certificate provided in subsection (2) of 20-4-106."

Section 2. **Repealer.** Section 20-4-105, MCA, is repealed.

Approved March 27, 1981.

CHAPTER NO. 166

AN ACT TO AMEND THE ALLOWABLE COST SCHEDULE FOR SPECIAL EDUCATION TO INCLUDE TRANSPORTATION COSTS FOR SPECIAL EDUCATION PERSONNEL WHO MUST TRAVEL TO IN-STATE CHILD STUDY TEAM AND INDIVIDUALIZED EDUCATION PROGRAM MEETINGS; AMENDING SECTION 20-7-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the

purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district *or to in-state child study team meetings or in-state individualized education program meetings*—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

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(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations.

(b) If special education budgets approved by the superintendent of public instruction exceed legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon its budget as a percent of all approved special education budgets. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district."

Approved March 27, 1981.

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CHAPTER NO. 167

AN ACT REQUIRING INDUSTRIAL DEVELOPMENT REVENUE BONDS TO BE FILED WITH THE SECURITIES COMMISSIONER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Bond filing.** All bonds issued under the authority of this part must be filed with the securities commissioner within 10 days of the date of their issue. The filing must include the name of the issuing authority, the name and address of the person or entity on whose behalf the bonds are issued, the amount of the bond issue, the date of the bond issue, and any other information the securities commissioner may request. Failure to comply with this section does not affect the validity of the bond issue.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 90, chapter 5, part 1, and the provisions of Title 90, chapter 5, part 1, apply to section 1.

Approved March 30, 1981.

CHAPTER NO. 168

AN ACT TO AMEND SECTION 49-3-303, MCA, TO ALLOW EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE THE COMMISSION FOR HUMAN RIGHTS OR THE BRINGING OF SUIT IN DISTRICT COURT FOR ALLEGED UNLAWFUL DISCRIMINATION BUT NOT BOTH SIMULTANEOUSLY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-3-303, MCA, is amended to read:

"49-3-303. Remedies for individuals. (1) Any person claiming to be aggrieved by a violation of any provision of this chapter may file a complaint for redress of the violation with the commission for human rights and upon *exhaustion of administrative remedies may* petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief. The court may grant such relief, by injunction or otherwise, as it considers appropriate.

(2) The complainant may pursue a complaint in district court without filing a complaint before the human rights commission but may not then pursue the complaint before the commission.

(3) Actions under this section are original actions."

Approved March 30, 1981.

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CHAPTER NO. 169

AN ACT TO AMEND SECTION 15-30-144, MCA, TO PROVIDE FOR AN AUTOMATIC EXTENSION OF 6 MONTHS FOR FILING INCOME TAX RETURNS WITH NO ADDITIONAL EXTENSIONS OF TIME; PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing — extensions of time. (1) Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department *considers* necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of $1.

(2) *An* automatic *6-month* extension of time for filing a return is allowed, provided that on or before the due date of the return, an application is made on forms available from the department or in writing to the department."

Section 2. **Applicability.** This act applies to tax years beginning after December 31, 1980.

Approved March 30, 1981.

CHAPTER NO. 170

AN ACT DEFINING THE SCOPE OF LIABILITY FOR OUTFITTERS AND GUIDES AND THE RESPONSIBILITY AND RISK BORNE BY PARTICIPANTS; AND CLARIFYING THE DEFINITION OF OUTFITTER; AMENDING SECTION 87-4-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-101, MCA, is amended to read:

"87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Advisory council" means the Montana outfitters' council provided for in 2-15-3403.

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(2) "License year" means that period commencing May 1 and ending April 30 of the next year.

(3) "Nonresident" means a person other than a resident.

(4) "Outfitter" means any person, persons, company, or corporation who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) *for consideration* aids or assists any person in locating or pursuing any game animal.

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide."

Section 2. **Purpose.** It is recognized that some activities conducted by outfitters and guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that can be taken. It is the purpose of [this act] to define those areas of responsibility and affirmative acts or omissions for which outfitters and guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage.

Section 3. **Duties of outfitters and guides.** An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of his respective profession while engaging in providing the services authorized to be performed by a licensed member of his profession;

(2) comply with all standards adopted by rule by the department of fish, wildlife, and parks.

Section 4. **Duties of participants.** (1) A participant shall:

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(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter or guide in this state;

(b) receive permission from the outfitter or guide prior to embarking on any self-initiated activity and inform the outfitter or guide of his plans and intentions upon receiving permission to engage in such self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's or guide's activities when such activities conform to the standards of care set forth in [section 3];

(b) use the outfitter's or guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter or guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to himself or any other person.

Section 5. **Codification.** Sections 2 through 4 are intended to be codified as an integral part of Title 87, chapter 4, part 1, and the provisions of Title 87, chapter 4, part 1, apply to sections 1 through 4.

Section 6. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved March 30, 1981.

CHAPTER NO. 171

AN ACT TO PROVIDE FOR THE PAYMENT OF DELINQUENT COURT-ORDERED CHILD SUPPORT BY DEDUCTION OF PAYMENTS FROM THE INCOME OF THE OBLIGOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Child Support Income Deduction Act of 1981".

Section 2. **Purpose.** The purpose of [this act] is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.

Section 3. **Petition for income deduction — who may initiate.** A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

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(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue or the department of social and rehabilitation services of the state of Montana.

Section 4. **When child support payments considered delinquent.** (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under [this act] when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under [this act] only in reference to a court order setting child support payments.

Section 5. **Notice.** On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

Section 6. **Discharge of delinquency.** If the obligor pays the total amount of child support due and payable within the 15 days specified in [section 5], no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

Section 7. **Delinquency of child support denied — hearing.** If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under [section 4].

Section 8. **Order for deduction from income for child support payments.** (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in [section 4], the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order shall state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under subsection (2) of [section 9] as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) to whom the deduction is to be made payable and where it is to be forwarded by the employer.

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Section 9. **Amount to be deducted from income.** (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each pay day, will pay off all outstanding child support payments delinquent within 2 years; or

(b) the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

Section 10. **Priority of income deduction.** An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;

(2) voluntary deductions from the obligor's wages or salary; and

(3) other court-ordered garnishment of wages or salary.

Section 11. **Remedy not exclusive.** The remedy provided in [this act] for the collection of unpaid child support is not exclusive. [This act] provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

Approved March 30, 1981.

CHAPTER NO. 172

AN ACT TO REMOVE THE SPECIFIC FEE FOR FILING FARM LABORERS' LIENS SO THAT THE FEE CHARGED FOR FILING THE LIEN WILL BE GOVERNED BY THE GENERAL PROVISIONS OF SECTION 7-4-2631, MCA; AMENDING SECTION 71-3-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-403, MCA, is amended to read:

"71-3-403. Filing — fee. It shall be the duty of the clerk and recorder to file and enter said verified statement, and he shall be entitled to a fee *as provided in 7-4-2631."*

Approved March 30, 1981.

CHAPTER NO. 173

AN ACT AMENDING SECTION 2-6-212, MCA, TO ALLOW THE STATE RECORDS COMMITTEE TO ESTABLISH CERTAIN CATEGORIES OF STATE RECORDS THAT MAY BE DESTROYED BY STATE AGENCIES WITHOUT PRIOR APPROVAL OF THE COMMITTEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-212, MCA, is amended to read:

"2-6-212. Disposal of public records. *(1) Except as provided in subsection (2), no* public record may be disposed of or destroyed without the unanimous approval of the state records committee. *When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.*

(2) The state records committee may, by unanimous approval, establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period."

Approved March 30, 1981.

CHAPTER NO. 174

AN ACT TO INCREASE THE FEES CHARGED BY THE COUNTY SHERIFF FOR SERVICE OF CERTAIN DOCUMENTS AND TO PROVIDE A FEE FOR THE HOLDING, CANCELLATION, OR POSTPONEMENT OF A SHERIFF'S SALE; AMENDING SECTION 7-32-2141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2141, MCA, is amended to read:

"7-32-2141. Fees of the sheriff. *(1)* The sheriff shall receive the following fees:

(a) for the service of summons and complaint on each defendant, *$5*;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, *$5*;

(d) for service of attachment on the body or order of arrest on each defendant, *$5*;

(e) for the service of affidavit, order, and undertaking in claim and delivery, *$5*;

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(f) for serving a subpoena, *$2.50* for each witness summoned;

(g) for serving writ of possession or restitution, *$5*;

(h) for trial of the right of property or damages, including all services except mileage, *$7*;

(i) for taking bond or undertaking in any case authorized by law, *$5*;

(j) for serving every notice, rule, or order, *$5* for each person served;

(k) for copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for *posting notices and* advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, *$5;*

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in subsection (1) of 7-4-2511 and the fees must be credited by the county treasurer to the sheriff's budget."

Approved March 30, 1981.

CHAPTER NO. 175

AN ACT TO PROVIDE THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY ADMINISTER CERTAIN AREAS IN STATE, FEDERAL, AND OTHER BUILDINGS FOR THE PURPOSE OF PROVIDING VENDING FACILITIES TO BLIND PERSONS WHO ARE IN NEED OF VOCATIONAL OPPORTUNITIES; REPEALING SECTIONS 49-4-401 THROUGH 49-4-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of this [act], in recognition of the vocational and economic needs of blind persons, to make available to those blind persons in need of vocational opportunities space in state, federal, or other property appropriate for certain business operations and to assist those persons in the development of business operations.

Section 2. **Definitions.** As used in this [act] the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision in the better eye to such a degree that the widest diameter of the

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visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this [act] and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person who the department has determined to be a blind person as defined in this [act] who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of social and rehabilitation services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this [act].

(7) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this [act] does not include vocational institutions or institutions of higher education.

(8) "Vending facility" means an area and equipment inclusive of vending machines on state property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property.

(9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

(10) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.

Section 3. **Certification and eligibility of blind persons.** (1) The department shall certify for the purposes of this [act] and the federal Randolph-Sheppard Act, as amended, those persons who are blind persons as defined in this [act] who the department has determined are in need of vocational opportunities and are qualified to operate vending facilities.

(2) Any person or vendor operating a vending facility under the auspices of the blind vendor program administered by the department prior to [the effective date of this act] may be certified as a blind vendor for the purposes of this [act].

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(3) Only certified blind persons are eligible for the vocational opportunities provided in this [act].

Section 4. **Vending facilities, equipment, and supplies — available to certified blind persons.** (1) The department may make available to a certified blind person a vending facility appropriate for providing that person with a business opportunity determined by the department to be suitable for that person.

(2) The department may, through the vocational rehabilitation programs it administers, provide by sale, lease, loan, or grant such equipment, stocks, and supplies as may be necessary for a blind vendor to establish or improve a vending facility business. The department shall retain a first option to repurchase any equipment it has sold to a blind vendor.

Section 5. **Administration of vending facilities — state properties.** (1) The department of administration or any other department of state government that administers state property subject to this [act] shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this [act] and that the department has determined is needed for the purposes of this [act]. A lease or contract for the operation of a vending facility entered into prior to [the effective date of this act] is not subject to this [act] while the lease or contract remains in effect. In addition, this [act] shall not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on [the effective date of this act] if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on [the effective date of this act] who, but for this [act], could reasonably be expected to renew his contract for the vending facility would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years.

(2) The department of administration or any other department of state government that administers state property subject to this [act] shall give reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

(3) Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection (2) stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this [act] or that it is not.

(4) A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use, to determine what vending facilities might be appropriate for the site and plan for such vending facilities.

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(5) The department shall administer those vending facilities which are determined to be appropriate and necessary.

(6) The department is not subject to any requirements for competitive bidding on state leases or services to the state on vending facilities that are to be made available to certified blind persons or when purchasing initial supplies for the purpose of assisting a blind vendor.

(7) The department may temporarily operate a vending facility administered by the department if there is no certified blind person qualified to operate that facility.

(8) The department may, except on state property, directly or through contractual arrangements, operate a facility consisting solely of vending machines if it has determined that operation by a blind vendor would be inappropriate. The department shall not directly operate vending machines on any state property where the department does not directly operate vending machines on [the effective date of this act], unless, after competitive bid, the department is unable to obtain a suitable private contractor to operate vending machines on the state property. The department shall not, except through competitive bid, authorize a blind vendor to operate on state property a vending facility which consists solely or primarily of vending machines and which does not require the active presence of a vendor during its hours of operation.

(9) Neither a blind vendor nor the department is required to pay for rent, utilities, janitorial services in accessible public areas, or building maintenance costs for the space occupied by a vending facility on state property. The department may charge a use fee in lieu of rental, on a basis to be determined by the department, in the case of any blind vendor operating a vending facility on state property whose net income for at least 10 of the preceding 12 months has exceeded twice the poverty level income for a non-farm family of four as determined by the federal government.

(10) The department may purchase, sell, lease, maintain, and manage as necessary the equipment, stocks, and supplies required for the operation of those vending facilities administered as provided for in this [act].

(11) The department shall, by rule, provide for appropriate allocation between the department and the blind vendors of liability for the operation of vending facilities operated pursuant to this [act].

Section 6. **Health and retirement fund — services to vendors.** (1) The department may manage a health and retirement fund for blind vendors.

(2) The department may set aside a reasonable percentage of the net incomes earned by blind vendors from the operation of vending facilities on state and other property administered by the department to fund the operation of vending facilities and to fund the blind vendors' health and retirement fund.

(3) The department may use all net income earned from facilities operated under the provisions of [section 5(7) and (8)] to fund services to blind vendors and to fund the blind vendors' health and retirement fund.

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Section 7. **Assurance of quality of service.** After consultation with departments that are served by vending facilities subject to this [act], the department may take action as necessary to assure the quality of services being provided by blind vendors.

Section 8. **Right to fair hearing.** A blind vendor is entitled to a fair hearing for any grievance against the department.

Section 9. **Administration of vending facilities on other property.** The department may enter into agreements with private parties or governmental entities not otherwise coming under the provisions of this [act] owning or controlling other property for the establishment and administration of blind vendor operations.

Section 10. **Implementation of Randolph-Sheppard Act, as amended.** (1) The department may enter into agreements with the federal government as provided for in the Randolph-Sheppard Act, as amended, for administering the Randolph-Sheppard Act for all state or federal purposes.

(2) The department may adopt rules to implement agreements with the federal government entered into under the Randolph-Sheppard Act, as amended.

Section 11. **Authority to adopt rules.** The department may adopt such rules as are necessary to effectuate this [act].

Section 12. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Repealer.** Sections 49-4-401 through 49-4-406, MCA, are repealed.

Approved March 30, 1981.

CHAPTER NO. 176

AN ACT TO PROVIDE DEAF PERSONS WITH CERTAIN RIGHTS PRESENTLY ACCORDED TO THE BLIND; AMENDING SECTIONS 49-4-202, 49-4-211, 49-4-212, 49-4-214, AND 49-4-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-202, MCA, is amended to read:

"49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, *the deaf,* and

the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, *the deaf,* and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved."

Section 2. Section 49-4-211, MCA, is amended to read:

"49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped, *and the deaf* have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped, *and the deaf* are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 3. Section 49-4-212, MCA, is amended to read:

"49-4-212. Access to housing accommodations. (1) Blind, visually handicapped, *and deaf* persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, *or deaf* person than for a person who is not so disabled."

Section 4. Section 49-4-214, MCA, is amended to read:

"49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind *or deaf* person has the right to be accompanied by a guide *or hearing* dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide *or hearing* dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind *or deaf* person who has a guide *or hearing* dog or who obtains a guide *or hearing* dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide *or hearing* dog but is liable for any damage done to the premises by the guide *or hearing* dog."

Section 5. Section 49-4-215, MCA, is amended to read:

"49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or

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interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, *deaf*, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor."

Approved March 30, 1981.

CHAPTER NO. 177

AN ACT PERMITTING AN ACTIVE VOLUNTEER FIREFIGHTER WHO IS PERMANENTLY AND TOTALLY DISABLED FROM A DUTY-RELATED INJURY TO RECEIVE A PARTIAL PENSION AT ANY AGE AND PROVIDING FOR MEDICAL REVIEW OF THE RECIPIENT AND CANCELLATION AND REINSTATEMENT OF THE PENSION; AMENDING SECTION 19-12-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-401, MCA, is amended to read:

"19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) *(a) Except as provided in subsection (2)(b), he* must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

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(b) An active member of a volunteer fire company whose duty-related injury results in a permanent, total disability as defined in 39-71-116(13) is eligible to receive a partial pension regardless of his age calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which he claims credit under subsection (1), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(4) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) He must have ceased to be an active member of any volunteer fire company, and if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company."

Section 2. **Medical review of certain disability retirees.** The board may require the recipient of a partial pension resulting from a permanent, total disability to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the recipient's residence or another place mutually agreed on. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient remains permanently and totally disabled.

Section 3. **Cancellation and reinstatement of certain pensions.** (1) The board may cancel a recipient's partial pension resulting from a permanent, total disability if:

(a) the board determines that the recipient is no longer permanently and totally disabled as provided in [section 2];

(b) the recipient refuses to submit to a medical examination under [section 2]; or

(c) the recipient engages in a gainful occupation during the previous year and the compensation earned by him in that year exceeds $5,500.

(2) The cancellation of a pension under this section does not prejudice any right of a firefighter to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

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(3) If a former recipient's earnings in any year after the cancellation of his pension under subsection (1)(c) are less than $5,500, his pension must be reinstated.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 19, chapter 12, part 4, and the provisions of Title 19, chapter 12, apply to sections 2 and 3.

Approved March 30, 1981.

CHAPTER NO. 178

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND ADMINISTER A SICK-PAY PLAN FOR STATE EMPLOYEES AND PERMITTING LOCAL GOVERNING BODIES TO ADMINISTER SIMILAR PLANS; AMENDING SECTION 2-18-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(3) "Permanent employee" means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary employee" means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

(7) "Seasonal employee" means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.

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(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Sick-pay plan" means a plan that:

(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and

(b) meets the requirements of 42 U.S.C. 409(b) or (d).

(11) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(12) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(13) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment."

Section 2. **Sick-pay plan for state employees.** The department of administration shall develop and administer a sick-pay plan for state employees. The plan shall be based on the use of sick leave credits provided for in 2-18-618. Payments from the plan may be made only from funds appropriated for that purpose. Until the plan is developed and implemented or if no funds are appropriated or if appropriated funds are insufficient to fully fund the plan, state employees may utilize sick leave provided for in 2-18-618, including accrued sick leave.

Section 3. **Saving clause.** This act does not affect existing rights to sick leave under 2-18-618, including accrued sick leave; provided, however, that the department of administration may utilize the use of sick leave credits provided for in 2-18-618 in developing and administering a sick-pay plan for state employees.

Approved March 30, 1981.

CHAPTER NO. 179

AN ACT TO PROVIDE FOR CONTINUED ELECTRICAL POWER OPERATIONS BY IRRIGATION DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Irrigation districts — authority to continue electrical power operations.** (1) An irrigation district or project that was organized prior to [the effective date of this act] under Title 85, chapter

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7, is authorized to continue all electrical power operations it conducted prior to [the effective date of this act].

(2) Electrical power operations authorized by this section include generation, distribution, and sale of electrical power and the reasonable and necessary means to carry out such operations.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 30, 1981.

CHAPTER NO. 180

AN ACT TO PROVIDE FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS TO PROTECT A PERSON FROM ABUSE BY A SPOUSE; AMENDING SECTIONS 27-19-201 AND 40-4-106, MCA.

WHEREAS, former Governor Judge appointed a task force to recommend ways in which spouse abuse could be stopped; and

WHEREAS, spouse abuse weakens the dignity and integrity of the family unit, and the state therefore has a substantial interest in aiding spouse abuse victims through the enforcement of state laws; and

WHEREAS, the task force recognized that the state's current laws on obtaining injunctions and restraining orders are not providing adequate protection to some spouse abuse victims and their families.

THEREFORE, it is the intent of this act to grant spouse abuse victims extraordinary relief in the form of preliminary injunctions and temporary restraining orders.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-106, MCA, is amended to read:

"40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to

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notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition alleging physical abuse against the petitioner by a spouse and requesting injunctive relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208.

(4) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed."

Section 2. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

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(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse by a spouse under the provisions of 40-4-106."

Approved March 30, 1981.

CHAPTER NO. 181

AN ACT AMENDING SECTION 16-4-501, MCA, TO REDUCE THE ANNUAL FEE FOR AN ALL-BEVERAGE LICENSE ISSUED TO A UNIT OF A NATIONALLY CHARTERED VETERANS' ORGANIZATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer is sold at those events lasting 2 or more days but in no case be less than $30.

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(3) The permit fee under 16-4-301(2) is $10 for the sale of beer only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, *$250 for a unit of a nationally chartered veterans' organization and* $400 *for all other licensees*;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *$350 for a unit of a nationally chartered veterans' organization and* $500 *for all other licensees*;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *$500 for a unit of a nationally chartered veterans' organization and* $650 *for all other licensees*;

(d) for each license in incorporated cities with a population of l0,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *$650 for a unit of a nationally chartered veterans' organization and* $800 *for all other licensees*;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

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(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages."

Approved March 30, 1981.

CHAPTER NO. 182

AN ACT TO AMEND SECTION 15-31-502, MCA, TO INCREASE THE INTEREST ON DELINQUENT CORPORATE LICENSE TAX FROM 9 PERCENT A YEAR TO 12 PERCENT A YEAR; PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-502, MCA, is amended to read:

"15-31-502. Assessment and payment of tax, penalty, and interest. All taxpayers shall compute the amount of tax payable under this chapter and shall remit such amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of *12%* per annum from the due date until paid."

Section 2. **Applicability.** This act applies to corporate taxes under Title 15, chapter 31, that become due on or after May 15, 1981, or that become due prior to May 15, 1981, and remain unpaid on or after May 15, 1981. The 12% rate is applied to unpaid tax commencing on May 15, 1981.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 30, 1981.

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CHAPTER NO. 183

AN ACT CONCERNING PAYMENT OF FEES FOR CERTAIN ALCOHOLISM RELATED SERVICES AND INDICATING HOW THE DEPARTMENT WILL DISTRIBUTE FUNDS GENERATED BY THE TAX ON ALCOHOLIC BEVERAGES; AMENDING SECTION 53-24-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-108, MCA, is amended to read:

"53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 to state-approved programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs and licensed hospitals *for detoxification services*; or

(b) as grants to state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

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(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state's earmarked revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year *and will be distributed by the department the following year as provided in 53-24-206(3)(b)*."

Approved March 30, 1981.

CHAPTER NO. 184

AN ACT FOR A GENERAL REVISION OF PESTICIDE REGISTRATION, LICENSING, ENFORCEMENT, AND PENALTIES PROVISIONS; AMENDING SECTIONS 80-8-204, 80-8-207, 80-8-209, 80-8-211, AND 80-8-301 THROUGH 80-8-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-204, MCA, is amended to read:

"**80-8-204. Application for applicator's license.** (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a $15 late licensing fee.

(2) *An individual applying* for a license to engage in aerial application of pesticides, shall *certify on the application that he has met* all the federal aviation *administration* and the department of community affairs *requirements for aerial pesticide applicators.*"

Section 2. Section 80-8-207, MCA, is amended to read:

"**80-8-207. Dealers.** (1) It is unlawful for *any person* to sell, *offer for sale,* deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of $15. Dealers applying for renewal of license shall do so on or before May 1 of

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that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a $15 late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a $15 licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 3. Section 80-8-209, MCA, is amended to read:

"**80-8-209. Farm applicators.** (1) Farm applicators shall obtain a special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. *The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system of issuing permits.*

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented *by such applicator* or as provided in (6) of this section.

(3) Farm applicators shall qualify for the permit by either passing a *graded* written examination or attending a training course approved by the department *and taking* an ungraded *written* examination. The *examinations and* course shall *require and demonstrate* practical knowledge *of* the *applicator's* ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

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(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) Farm applicators *manifesting* reading disabilities may become certified to use *as many as* two restricted-use pesticides by passing a specific oral examination on the particular pesticide(s) if the applicator documents that a certified applicator in the immediate vicinity can advise him.

(6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbors if he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 4. Section 80-8-211, MCA, is amended to read:

"80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant, renew, or may revoke *or modify* a license or permit, as the case may require, when the department is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated or that he has committed any of the following acts, each of which is declared to be a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be utilized;

(b) applied *or sold* unapproved or illegal materials *or applied or sold a pesticide without possessing a current and appropriate license or permit*;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or any lawful order of the department;

(f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(g) made false or fraudulent records or reports;

(h) operated equipment for the commercial application of a pesticide without having a license or permit;

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(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;

(k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage his services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed."

Section 5. Section 80-8-301, MCA, is amended to read:

"80-8-301. Report of loss or damage — effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) name and address of claimant;

(b) type, kind, and location of property alleged to be injured or damaged;

(c) date the alleged injury or damage occurred;

(d) name of person applying the pesticide and allegedly responsible for the loss or damage;

(e) name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not *of itself* be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal."

Section 6. Section 80-8-302, MCA, is amended to read:

"80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this chapter. The department is

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authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists.

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department's authorized chemist shall be accepted as prima facie evidence of the determinations set forth therein."

Section 7. Section 80-8-303, MCA, is amended to read:

"80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201(5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, he shall affix to such article a tag or other appropriate marking giving notice thereof and *stating* that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. *Any* person *who removes* or *disposes* of such detained or embargoed article by sale or otherwise, without *prior* permission, or *removes* or *alters* the tag or marking, *is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.*

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or

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device on the representation to the court by the department that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid."

Section 8. Section 80-8-304, MCA, is amended to read:

"80-8-304. Investigation and enforcement authority. *(1)* In enforcing this chapter, the department or its duly authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

(a) equipment *used for applying pesticides*;

(b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(c) records on the selling or use of pesticides and the person's stock of pesticides;

(d) storage and disposal of pesticides by *any person*;

(e) pesticides being applied or to be applied *and to sample the pesticides*;

(f) the use and application of a pesticide*; or*

(g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples.

(2) The department is authorized to investigate all incidents involving the application, introduction, or utilization of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons other than the applicator.

(3) The investigation authority provided for in this section may be exercised over persons not possessing a required license or permit only upon receipt of a complaint or report of an incident."

Section 9. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. *(1)* It *is* unlawful for any person*:*

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment*;*

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

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(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

Section 10. Section 80-8-306, MCA, is amended to read:

"80-8-306. Penalties. (1) Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter shall be adjudged guilty of a misdemeanor *and shall be fined not less than $100 but not more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.*

(2) The department or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. *When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of any other county wherein a violation has occurred or is about to occur, and the department may select and proceed in the court most appropriate under the circumstances.* The injunction is to be issued without bond.

(3) Nothing in this chapter is to be construed as requiring the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes the public interest will be best served by other remedial action, by a suitable notice of warning in writing, *or by a lawful written order*; nor is any part of this chapter to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) *Any* person *who* with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than $500 or imprisoned for not more than 1 year, or both."

Approved March 30, 1981.

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CHAPTER NO. 185

AN ACT TO PROHIBIT THE SALE OF CERTAIN TYPES OF CONTAINERS; AND TO PROVIDE AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [section 2], the following definitions apply:

(1) "Beverage" means beer or other malt beverage, mineral water, soda water, tea, or carbonated soft drink in liquid form and intended for human consumption.

(2) "Container" means an individual, separate, sealed metal can containing a beverage.

Section 2. **Detachable opening prohibited.** No person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable when opening the container.

Section 3. **Violations — penalty.** A violation of [section 2] is a misdemeanor and is punishable as provided in 46-18-212. Each day on which a violation occurs is a separate offense.

Section 4. **Effective date.** This act is effective January 1, 1982.

Approved March 30, 1981.

CHAPTER NO. 186

AN ACT TO REQUIRE THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ALLOW ADEQUATE TIME FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN TO UTILIZE ITS RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR ASSISTANCE BY A DISTRICT WITHIN 12 MONTHS; AMENDING SECTION 85-2-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in

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85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(7) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, *when requested by the districts,* for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the *preparation and* processing of such applications for the conservation districts. *The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.*

(8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation

are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

Approved March 30, 1981.

CHAPTER NO. 187

AN ACT AMENDING SECTION 61-10-209, MCA, TO ALLOW GROSS VEHICLE WEIGHT FEES TO BE PAID FOR 1-MONTH OR 3-MONTH PERIODS; AND RAISING THE FEE FOR REGISTRATION AT SUCH TIMES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-209, MCA, is amended to read:

"61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee. (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, trailers, tractors, pole trailers, or semitrailers may be paid for *a 1-month period for one-twelfth the regular fee or for* a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the annual vehicle registration fee, an additional fee of *$5* shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the *months* for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the *1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or*

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever

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is greater, pays the required fee for a license for an additional *1-month or* 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways *in violation of subsection (2)* is guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.

(4) If within 5 days thereafter no license for a full year has been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner which is directed for these cases by the division of motor vehicles until the requirement is met."

Approved March 30, 1981.

CHAPTER NO. 188

AN ACT TO CLARIFY THE LAWS RELATING TO ADMINISTRATIVE ENFORCEMENT OF SUPPORT FOR DEPENDENT CHILDREN; CORRECTING AN ERROR IN SECTION 40-5-202, MCA; AND PROVIDING FOR A HEARING IN CASES INVOLVING A SUPPORT DEBT BASED UPON A COURT JUDGMENT; AMENDING SECTIONS 40-5-202 AND 40-5-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of revenue — powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

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(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court *orders* an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation shall apply to temporary spouse support orders and family maintenance orders up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or *the director's* authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 2. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

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(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt;

(e) a statement that the debtor is entitled to a fair hearing.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 20 days from the date of service upon the debtor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor may request a fair hearing as provided in 40-5-226."

Approved March 30, 1981.

CHAPTER NO. 189

AN ACT TO AMEND THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY REQUEST THE PROSECUTING ATTORNEY TO REPRESENT THE SUPPORT OBLIGEE; AMENDING SECTION 40-5-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-113, MCA, is amended to read:

"**40-5-113. Officials to represent obligee.** If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, *the department of revenue,* a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Approved March 30, 1981.

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CHAPTER NO. 190

AN ACT TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE; AMENDING SECTION 27-2-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; *or*

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud."

Approved March 30, 1981.

CHAPTER NO. 191

AN ACT TO PROVIDE FOR THE SETTING OF A DATE FOR EXECUTION OF A CRIMINAL DEFENDANT FOLLOWING DISSOLUTION OF A COURT-ORDERED STAY OF A PREVIOUS EXECUTION DATE; AMENDING SECTION 46-19-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less

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than 30 days or more than 60 days from the date the sentence is pronounced. *If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.*

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

(5) After the execution, the sheriff must make a return upon the death warrant showing time, mode, and manner in which it was executed."

Approved March 30, 1981.

CHAPTER NO. 192

AN ACT TO AUTHORIZE THE DEPARTMENT OF COMMUNITY AFFAIRS TO PROVIDE SECURITY AT STATE AIRPORTS WHENEVER REQUIRED BY FEDERAL REGULATIONS; AMENDING SECTION 67-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2-302, MCA, is amended to read:

"67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

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(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(2) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations."

Approved March 30, 1981.

CHAPTER NO. 193

AN ACT TO PROVIDE VETERANS OF THE VIETNAM CONFLICT ERA SERVICE CREDITS FOR THE TEACHERS' RETIREMENT SYSTEM COMPARABLE TO THOSE GRANTED VETERANS OF WORLD WAR II AND THE KOREAN CONFLICT AND TO PROVIDE FUNDING FOR THESE CREDITS THROUGH INCREASED EMPLOYER CONTRIBUTIONS; AMENDING SECTIONS 19-4-404 AND 19-4-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-404, MCA, is amended to read:

"**19-4-404. Creditable service for active service in military, red cross, or merchant marine.** *(1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive, if he has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of his military service.*

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(2) If a member is ineligible for service credit under subsection (1), he may apply *under the provisions of this subsection* for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 2. Section 19-4-605, MCA, is amended to read:

"19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions shall be accumulated and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to *6.343%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amounts required to allow regular interest on the annuity savings fund and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(6) All pensions and benefits in lieu thereof shall be paid from the pension accumulation fund.

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(7) The retirement board may, in its discretion, transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also an amount to cover expenses of administration."

Section 3. **Coordination section.** If both this act and HB 45, introduced in the 47th Legislature, are passed and approved, the percentage amount contained in 19-4-605 shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act.

Approved March 30, 1981.

CHAPTER NO. 194

AN ACT TO REMOVE THE LIMITATION ON THE NUMBER OF DEPUTIES THAT MAY BE HIRED BY A COUNTY SHERIFF IN ANY COUNTY OF THE STATE; REPEALING SECTION 7-32-2103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 7-32-2103, MCA, is repealed.

Approved March 30, 1981.

CHAPTER NO. 195

AN ACT TO GENERALLY REVISE AND CLARIFY CHAPTERS 21 AND 22 OF TITLE 46, MCA, PERTAINING TO POSTCONVICTION AND HABEAS CORPUS RELIEF; AMENDING SECTIONS 46-21-101, 46-21-102, 46-21-104, 46-21-105, 46-21-201, 46-21-203, AND 46-22-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-101, MCA, is amended to read:

"46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence *or* the supreme court to vacate, set aside, or correct the sentence."

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Section 2. Section 46-21-102, MCA, is amended to read:

"46-21-102. When petition may be filed. A petition for such relief may be filed at any time *within 5 years of the date of the* conviction."

Section 3. Section 46-21-104, MCA, is amended to read:

"46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. *The petition must be accompanied by a supporting memorandum including appropriate arguments* and citations and discussion of authorities."

Section 4. Section 46-21-105, MCA, is amended to read:

"46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. *When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition.*"

Section 5. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place *and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may* grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed."

Section 6. Section 46-21-203, MCA, is amended to read:

"46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within *60 days of* the entry of the order."

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Section 7. Section 46-22-101, MCA, is amended to read:

"46-22-101. Who may prosecute writ. *(1) Except as provided in subsection (2), every* person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal. Relief for such purposes is limited to the provisions of Title 46, chapter 21."

Approved March 30, 1981.

CHAPTER NO. 196

AN ACT TO AMEND SECTION 3 OF CHAPTER 111 OF THE LAWS OF 1981 TO PROVIDE FOR A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3 of Chapter 111 of the Laws of 1981 is amended to read:

"Section 3. **Effective date.** This act is effective *January 1, 1982."*

Approved March 30, 1981.

CHAPTER NO. 197

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION REMOVING THE RESTRICTION ON INVESTMENT OF PUBLIC FUNDS IN CORPORATE CAPITAL STOCK AND THE REQUIREMENT THAT SCHOOL FUND INVESTMENTS BEAR A FIXED INTEREST RATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"Section 13. Investment of public funds. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

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(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments as may be provided by law."

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1983.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the State of Montana at the general election to be held November, 1982, by printing on the ballot the full title of this act and the following:

☐ FOR removing the restriction on investment of public funds in corporate capital stock and the requirement that school fund investments bear a fixed rate of interest.

☐ AGAINST removing the restriction on investment of public funds in corporate capital stock and the requirement that school fund investments bear a fixed rate of interest.

CHAPTER NO. 198

AN ACT PROVIDING FOR FINES AND ASSESSMENT OF COSTS IN FELONY AND MISDEMEANOR CRIMINAL CASES; ALLOWING COMMUNITY SERVICE AS A CONDITION OF DEFERRED OR SUSPENDED SENTENCES; AMENDING SECTION 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount

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and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

Section 2. **Payment of costs by defendant.** (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

Section 3. **Fine or costs as a condition on suspended or deferred sentence.** (1) Whenever a defendant is sentenced to pay a fine or costs under [section 1 or 2] and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

Section 4. **When payment of fine or costs due.** Whenever a defendant is sentenced to pay a fine or costs under [section 1 or 2], the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

Section 5. **Disposition of money collected as fines and costs.** The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of [sections 1 and 2] shall be paid to the county general fund of the county in which the court is held.

Section 6. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any

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misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of a fine as provided in [section 1];

(vi) payment of costs as provided in [sections 2 and 3];

(vii) community service;

(viii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(ix) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions *or conditions* during the period of suspended sentence. Such reasonable restrictions *or conditions* may include any of those listed in subsections (1)(a)(i) through *(1)(a)(ix).*

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in [section 2];

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) *through (1)(e).*

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended."

Section 7. **Codification instruction.** (1) It is intended that sections 1 through 5 be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1, following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be

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fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118.

Approved March 31, 1981.

CHAPTER NO. 199

AN ACT TO REQUIRE OIL AND GAS DEVELOPERS OR OPERATORS TO GIVE WRITTEN NOTICE TO SURFACE OWNERS OF INTENT TO BEGIN DRILLING OPERATIONS; TO REQUIRE OIL AND GAS DEVELOPERS AND OPERATORS TO COMPENSATE SURFACE OWNERS FOR DAMAGES CAUSED BY DRILLING AND PRODUCTION OPERATIONS; AND TO ALLOW SUCH COMPENSATION TO BE MADE IN ANNUAL INSTALLMENTS UNDER CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enccted by the Legislature of the State of Montana:

Section 1. **Purpose — legislative findings.** (1) The purpose of [this act] is to provide for the protection of surface owners of land underlaid with oil and gas reserves while allowing for the necessary development of those reserves.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

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(a) it is necessary to protect the economic well-being of individuals engaged in agricultural production;

(b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and

(c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil and gas development.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

(2) "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to [the effective date of this act] and the production operations directly related to the exploration or drilling.

(3) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

(4) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

(5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

Section 3. **Notice of drilling operations.** In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner at his address as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property.

Section 4. **Surface damage and disruption payments.** The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall be given to the period of time during which the loss occurs. The surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner shall be compensated by a single sum payment for harm caused by exploration only. The payments contemplated by this section may only cover land directly affected by drilling operations and production. Payments under this section are intended to compensate the surface owner for

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damage and disruption; no person may reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate.

Section 5. **Damages.** The oil and gas developer or operator is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to property, real or personal, caused by drilling operations and production.

Section 6. **Notification of injury to property.** To receive compensation under [this act], a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable man.

Section 7. **Agreement — offer of settlement.** Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to [section 6], he shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer.

Section 8. **Rejection — legal action.** If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained.

Section 9. **Remedies cumulative.** The remedies provided by [this act] do not preclude any person from seeking other remedies allowed by law.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** This act is effective on June 1, 1981.

Approved March 31, 1981.

CHAPTER NO. 200

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO JURIES; AMENDING SECTIONS 3-15-201, 3-15-401, 3-15-403, 3-15-502, 3-15-503, 3-15-506, MCA; AND REPEALING SECTIONS 3-15-202, 3-15-314, AND 3-15-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-201, MCA, is amended to read:

"3-15-201. Fees in courts of record. (1) A grand or trial *jury panel member* shall receive $12 per day for attendance before any court

of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the county seat. *Those jurors selected from the panel for a case shall receive an additional $13 a day while serving.*

(2) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case *shall forfeit* per diem and mileage."

Section 2. Section 3-15-401, MCA, is amended to read:

"3-15-401. Jury lists — by whom and when made. The chairman or, in his absence, any member of the board of county commissioners and the county clerk and recorder of each county must meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of *June* of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within *15* days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by him in his office."

Section 4. Section 3-15-502, MCA, is amended to read:

"3-15-502. Jury commissioner. *The clerk of court is the jury commissioner.*"

Section 5. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing — how conducted. (1) The clerk shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the *jury commissioner* shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box.

(3) If the *jury commissioner* is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

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(4) No person may be asked to serve for more than one term during any year unless all the numbers in the jury box have been drawn and there are no other qualified jurors available."

Section 6. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the *jury commissioner* shall draw as many numbers from the jury box as are necessary to secure the required number of additional jurors. Before *the jury commissioner draws* the numbers, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the *jury commissioner.*"

Section 7. **Repealer.** Sections 3-15-202, 3-15-314, and 3-15-508, MCA, are repealed.

Approved March 31, 1981.

CHAPTER NO. 201

AN ACT REPEALING THE ROLLBACK TAX ON AGRICULTURAL LAND; DECLARING CERTAIN TAXES DISCHARGED; AMENDING SECTIONS 15-7-207, 15-7-209, AND 15-7-210, MCA; REPEALING SECTIONS 15-7-204, 15-7-205, 15-7-211, 15-7-214, AND 15-7-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-209, MCA, is amended to read:

"15-7-209. Reclassification by owner. Whenever land which is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor."

Section 2. **Certain unpaid taxes discharged — stricken from records.** All rollback taxes unpaid or paid under protest on [the effective date of this act] that constitute a lien on real property in the state are discharged and stricken from the respective tax records.

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Section 3. Section 15-7-207, MCA, is amended to read:

"15-7-207. Continuance of valuation as agricultural land. Continuance of valuation, assessment, and taxation under this part shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this part and not upon continuance in the same owner of title to the land."

Section 4. Section 15-7-210, MCA, is amended to read:

"15-7-210. Tax on change of use of part of tract. Separation or split-off of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other actions of the owner of such land, for a use other than agricultural shall subject the land so separated *to reclassification by the department* but shall not impair the right of the remaining land to continuance of valuation, assessment, and taxation hereunder, provided it meets the minimum requirements of this part."

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Repealer.** Sections 15-7-204, 15-7-205, 15-7-211, 15-7-214, and 15-7-215, MCA, are repealed.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1981.

CHAPTER NO. 202

AN ACT TO ELIMINATE CERTAIN TAXES FOR LINEAL DESCENDANTS; AMENDING SECTIONS 72-16-313 AND 72-16-321, MCA; PROVIDING APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-313, MCA, is amended to read:

"72-16-313. Exemptions of spouse and other relatives. (1) The clear value of all property distributed or passing to decedent's surviving spouse is exempt.

(2) The *clear value of all property distributed or passing to the* following *is* exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

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(b) any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1)*; and*

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2)."

Section 2. Section 72-16-321, MCA, is amended to read:

"72-16-321. Primary rates — amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is *the* lineal ancestor of the decedent;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) a stranger in blood to the decedent; or

(c) a body politic or corporate."

Section 3. **Applicability.** [This act] applies to estates of decedents who died after December 31, 1980.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1981.

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CHAPTER NO. 203

AN ACT TO INCREASE THE AVERAGE NUMBER BELONGING (ANB) NUMBER FOR FOUNDATION AID TO SCHOOL DISTRICTS WITH UNUSUAL ENROLLMENT INCREASES; AMENDING SECTION 20-9-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by 180. The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(2) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(3) No later than May 10, the district shall submit its application for an unusual enrollment increase to the superintendent of public instruction. Such application shall include:

(a) the previous year's average number belonging;

(b) the estimate of the current school fiscal year's average number belonging, as provided in subsection (1) above;

(c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection (2) above; and

(d) any other information or data that may be requested by the superintendent of public instruction.

(4) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase which the estimated average number belonging for the ensuing fiscal year is over the current year's average number belonging; and

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(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (6) if the increase in subsection (4)(a) is at least 6%.

(5) The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

(6) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing school fiscal year shall be the difference between the approved estimated average number belonging for the ensuing school fiscal year and 106% of the current year's average number belonging. The amount so determined shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program.

(7) Any equalization or entitlement increases resulting from provisions of this section shall be reviewed at the end of the ensuing school fiscal year. If the actual average number belonging is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements shall be overpayments subject to the refund provisions of 20-9-344(3)."

Approved March 31, 1981.

CHAPTER NO. 204

AN ACT TO AMEND THE GOVERNOR'S ENERGY SUPPLY EMERGENCY POWERS TO PROVIDE FOR REGULAR MONITORING OF ENERGY SUPPLIES AND DEMAND; TO REQUIRE SUBMISSION OF REPORTS ON PETROLEUM SUPPLIES AND CONSUMPTION; TO PROVIDE FOR CONFIDENTIALITY OF CERTAIN INFORMATION SUBMITTED; AND AMENDING SECTIONS 90-4-301, 90-4-302, AND 90-4-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-301, MCA, is amended to read:

"90-4-301. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, *regularly monitor energy supplies and demand,* formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy

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shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this part to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide for the regular monitoring of energy supplies and demand; however, nothing in this part may be construed to authorize the establishment of an independent state energy forecasting program; and

(c) provide penalties for violations of this part."

Section 2. Section 90-4-302, MCA, is amended to read:

"90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy committee established in 90-4-303.

(5) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy which will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions.

(8) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

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(9) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals.

(10) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(11) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(12) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(13) "Bulk pipeline terminal" means a facility that is primarily used for storage for marketing of petroleum products and that has total bulk storage capacity of 50,000 gallons or more."

Section 3. Section 90-4-305, MCA, is amended to read:

"90-4-305. Information obtainable by governor. (1) The governor may obtain information *on a regular basis* from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications *other than for petroleum products*;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, the governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by the governor, from the following persons:

(a) Each refiner shall submit Montana refinery processing data by fuel type in custody including:

(i) inventory stocks at the beginning and end of the month;

(ii) receipts during the month;

(iii) inputs during the month;

(iv) production during the month;

(v) shipments, losses, and refinery fuel use during the month.

(b) Each prime petroleum supplier shall submit:

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(i) 3-month projections of his Montana supply and stock of petroleum products that he anticipates supplying to Montana customers; and

(ii) the actual volume of petroleum products delivered in the state the previous month.

(c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.

(d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.

(e) Each prime petroleum supplier shall submit quarterly reports of his monthly marketing sales in Montana by standard point locater index, or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under *subsections (1) and (2)* of this section during a state of energy emergency, the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), nothing in this part requires the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) The information required under subsection (2) of this section is subject to the following restrictions:

(a) Except in accordance with a proper judicial order, no public officer or employee charged by the governor with the custody of this information may divulge or make known in any manner any information that is specific to a particular distributor.

(b) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part, except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

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(c) Nothing in this section shall preclude access to such information by the legislative auditor in carrying out his functions under Title 5, chapter 3, MCA.

(7) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process."

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 31, 1981.

CHAPTER NO. 205

AN ACT TO RAISE THE GENERAL BONUS PAYMENT PAID TO EXPANDED SCHOOL DISTRICTS; AMENDING SECTION 20-6-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-401, MCA, is amended to read:

"20-6-401. Definitions. As used in this part, unless the context clearly indicates otherwise the following definitions apply:

(1) "Component districts" are the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" shall be the average number belonging for the current school year in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils shall be ineligible for bonus payment consideration.

(3) "Enlarged district" is the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" shall be *$300* per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. Such payment shall be made from the state school equalization aid account.

(5) "Transportation bonus payment" will be the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district shall be entitled to the transportation bonus payment for such eligible pupil for a period of 3 years. Such payment shall be made from the state transportation aid

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account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔ % state financing of the on-schedule amount for this payment shall be prorated to provide such financing for the eligible pupil."

Approved March 31, 1981.

CHAPTER NO. 206

AN ACT CLARIFYING AND REVISING THE DEFINITION AND INVOLUNTARY RETIREMENT PROVISIONS CONCERNING THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM; EXTENDING BENEFITS TO CERTAIN SURVIVING SPOUSES; AND ELIMINATING SUBROGATION OF BENEFITS; AMENDING SECTIONS 19-6-101, 19-6-501, AND 19-6-503, MCA; REPEALING SECTION 19-6-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

(8) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to

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replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means a person who has accumulated deductions in the account standing to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member.

(11) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol *or 60 years of age, whichever occurs first.*

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 2. Section 19-6-501, MCA, is amended to read:

"19-6-501. Eligibility and application for service retirement allowance. A member in service who has completed at least *20* years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof."

Section 3. Section 19-6-503, MCA, is amended to read:

"19-6-503. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity *based on a retirement age of 60.*"

Section 4. **Extension of benefits.** The surviving spouse of a highway patrolman who retired prior to July 1, 1974, shall receive a minimum retirement allowance of no less than $300 per month beginning January 1, 1981, or the first day of the month following the patrolman's death, whichever is later.

Section 5. **Repealer.** Section 19-6-105, MCA, is repealed.

Approved March 31, 1981.

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CHAPTER NO. 207

AN ACT PROHIBITING DEFERRAL OF IMPOSITION OF SENTENCE IN A FELONY CASE FOR A DEFENDANT CONVICTED OF A FELONY ON A PRIOR OCCASION; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 46-18-201 AND 46-18-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above;

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include any of those listed in subsections (1)(a)(i) through (1)(a)(vi).

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(e) impose any combination of subsections (1)(b), (1)(c), and (1)(d).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

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(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), *and (5)* of 46-18-201, 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

Approved March 31, 1981.

CHAPTER NO. 208

AN ACT AMENDING THE DEFINITION OF RURAL AREA AS THE TERM APPLIES TO THE RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT; AMENDING SECTION 35-18-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-102, MCA, is amended to read:

"35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

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(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971; "rural area", as applied to all corporations organized under the provisions of 35-18-105(2), means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of 1,500 persons *except that an incorporated or unincorporated city or town with population more than 1,500 persons is considered a "rural area" for purposes of this chapter if the system or facilities serving the persons in the city or town is acquired by a cooperative by agreement with the company or entity serving the city or town, or if the city or town was served by the cooperative when it had a population of less than 1,500 persons and subsequently grew to a population more than 1,500 persons; but for the purposes of this chapter a "rural area" means an area not included within the boundary of any incorporated or unincorporated city or town having a population in excess of 3,500 persons which is not already being served by a system or facilities."*

Approved March 31, 1981.

CHAPTER NO. 209

AN ACT TO AMEND SECTION 76-5-1117, MCA, PROVIDING FOR BROADENED STATUTORY METHODS BY WHICH CITIES, TOWNS, AND COUNTIES CAN ASSESS TAX FOR PAYMENT OF BONDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-1117, MCA, is amended to read:

"76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special

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improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42, *or* Title 7, chapter 12, part 21, as to cities and counties, respectively, *or 76-5-1114(1).*

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds."

Approved March 31, 1981.

CHAPTER NO. 210

AN ACT TO PROVIDE THE PAYMENT OF INTEREST ON DEATH BENEFITS UNTIL THE DATE OF PAYMENT; AMENDING SECTION 19-3-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), *and (3)* as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workers' compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment*; and*

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1981.

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CHAPTER NO. 211

AN ACT TO PROVIDE AN EXCEPTION FROM EXAMINATION FOR MECHANICAL BREAKDOWN INSURANCE AGENTS; AMENDING SECTION 33-17-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner;

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(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) title insurance agents;

(h) mechanical breakdown insurance agents."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1981.

CHAPTER NO. 212

AN ACT TO AMEND THE MOTOR VEHICLE INSURANCE LIABILITY LAWS TO ALLOW LIMITATION OF THE INSURER'S LIABILITY IN CASES WHERE THERE IS MORE THAN ONE VEHICLE COVERED UNDER A SINGLE INSURANCE POLICY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, shall be determined as follows, regardless of the number of vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident shall be the limit specified for the vehicle involved in the accident;

(b) if no vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident shall be the highest limit of coverage specified for any one vehicle insured under the policy; and

(c) the limits of coverage specified for each vehicle insured under the policy shall not be added together to determine the limit of insurance coverage available under the policy for any one accident.

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(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent duplicate payments for the same element of loss.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33 apply to section 1.

Approved March 31, 1981.

CHAPTER NO. 213

AN ACT TO AMEND THE UNIFORM COMMON TRUST ACT; DEFINING AFFILIATED BANKS OR TRUST COMPANIES; PROVIDING EXCLUSIONS; AMENDING SECTIONS 32-1-703 AND 32-1-706, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-703, MCA, is amended to read:

"32-1-703. Common trust fund allowed. *(1) Any* bank or trust company qualified to act as fiduciary in this state may establish *and administer* common trust funds *composed of property permitted by law for the investment of trust funds* for the purpose of furnishing investments to:

(a) itself as fiduciary;

(b) itself and others as cofiduciaries;

(c) any affiliated bank or trust company, including any foreign affiliated bank or trust company, as fiduciary;

(d) any affiliated bank or trust company, including any foreign affiliated bank or trust company, and others as cofiduciaries; or

(e) any combination of the entities listed in subsections (1)(a) through (1)(d).

(2) Any bank or trust company may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust *funds administered by itself or by any affiliated bank or trust company* if the investment is not prohibited by the instrument, judgment, decree, order, *or statute* creating *and governing such* fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to the investment."

Section 2. Section 32-1-706, MCA, is amended to read:

"32-1-706. Common trust funds established. *Each common trust fund established hereunder is a separate and distinct entity from the fiduciary relationships participating in the fund. No fiduciary, in administering a participating fiduciary relationship, may be required to make*

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any apportionment or allocation between the principal and income of such relationship different from that made for the common trust fund. No such participating fiduciary relationship or person having an interest in the relationship may have or be considered to have any ownership in any particular property of the common trust fund; but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income; and the ownership of all property of the common trust fund shall be in the trustee of the fund."

Section 3. **Affiliated defined.** For purposes of this part, two or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States Internal Revenue Code.

Section 4. **Limited application of insurance law — exemption.** (1) Nothing in this part exempts a common trust fund or any fiduciary thereof from the requirements of Title 33 if such common trust fund or fiduciary is used for insurance purposes.

(2) The establishment and maintenance of common trust funds under this part are exempt from the provisions of Title 30, chapter 10.

Section 5. **Codification instruction.** Sections 3 and 4 are intended to be codified as an integral part of Title 32, chapter 1, part 7, and the provisions of Title 32, chapter 1, part 7, apply to sections 3 and 4.

Approved March 31, 1981.

CHAPTER NO. 214

AN ACT ESTABLISHING FAIR TRADE PRACTICES FOR THE DISTRIBUTION AND EXHIBITION OF MOTION PICTURE FILMS; PROHIBITING BLIND BIDDING; PROHIBITING PAYMENT OF MINIMUM GUARANTEES ON PERCENTAGE PICTURES; PROVIDING INFORMATION ON TRADE SCREENINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This act shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

Section 2. **Purpose.** The purposes of this act are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

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Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. Such showing shall be open to any exhibitor interested in exhibiting the motion picture, and such exhibitor or his buying agency will be notified of such trade screening.

Section 4. **Blind bidding prohibited.** No distributor or exhibitor may engage in blind bidding.

Section 5. **License agreements — unlawful provisions.** (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding entered into after [the effective date of this act] that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

Section 6. **Bid requirements.** If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion picture that is the subject of the invitation to bid.

Section 7. **Void acts.** Any provision of an invitation to bid or a license agreement entered into after [the effective date of this act] that waives any of the prohibitions of or fails to comply with [this act] is void and unenforceable.

Section 8. **Violation a misdemeanor.** It is unlawful for any person to willfully violate any provision of [this act]. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

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Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 31, 1981.

CHAPTER NO. 215

AN ACT TO ALLOW THE TRUSTEES OF A COUNTY HIGH SCHOOL DISTRICT THAT IS NOT UNIFIED WITH AN ELEMENTARY DISTRICT TO AUTHORIZE A LEVY OF NOT MORE THAN 2 MILLS FOR THE OPERATION OF AN ADULT EDUCATION PROGRAM; AMENDING SECTION 20-7-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-705, MCA, is amended to read:

"20-7-705. Adult education fund. (1) A separate adult education fund shall be established when an adult education program is operated by a district or community college district. The financial administration of such fund shall comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of any district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund shall be the depository for all federal, state, and district moneys received by the district in support of the adult education program.

(3) The trustees of any district may authorize the levy of a tax of not more than 1 mill on the district, *except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not more than 2 mills on the district,* for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by such levy. The approval of the superintendent of public instruction shall have been acquired by the trustees before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for such approval.

(4) Whenever the trustees of any district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of such program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program which has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent

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shall report such levy requirement to the county commissioners on the second Monday of August and a levy on the district shall be made by the county commissioners in accordance with 20-9-142."

Approved March 31, 1981.

CHAPTER NO. 216

AN ACT TO CLARIFY THE LAWS RELATING TO DISASTER AND EMERGENCY SERVICES EXPENDITURES AND THE LOCAL EMERGENCY LEVY; AMENDING SECTIONS 10-3-311 AND 10-3-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-311, MCA, is amended to read:

"10-3-311. Emergency or disaster expenditures. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, or other acts of God resulting in damage or disaster to the works, buildings or property of the state or any political subdivision thereof or which menace the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation *in the affected fund* is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) The governor shall be charged with the implementation of the program.

(3) The administration and development of rules for implementation of this section will be promulgated by the department of administration."

Section 2. Section 10-3-405, MCA, is amended to read:

"10-3-405. Levying emergency tax — disposition of surplus. (1) The *governing body of the* city *or town or* the *governing body of the* county, *or both,* shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the *governing body of the*

city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the *governing body of the county* shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies."

Approved March 31, 1981.

CHAPTER NO. 217

AN ACT TO ALLOW MUNICIPALITIES TO DESTROY OLD RECORDS AFTER A PERIOD OF 5 YEARS; AMENDING SECTION 7-5-4124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4124, MCA, is amended to read:

"7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon the order of the city or town council or commission and with the approval of the department of community affairs, a city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of community affairs after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

(3) Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any city or town officer after a period of 5 years."

Approved March 31, 1981.

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CHAPTER NO. 218

AN ACT PROVIDING FOR OPEN-END LOANS BY THE HOLDER OF A SUPPLEMENTARY LICENSE UNDER THE MONTANA CONSUMER LOAN ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Open-end loans.** (1) A holder of a supplementary license may make open-end loans up to the maximum amount permitted for other loans under this chapter and may contract for and receive charges at a rate not in excess of the rate set forth in 32-5-301(10) on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by [section 4] and by 32-5-301(7).

Section 2. **Computation of charges.** (1) Charges authorized by [sections 1 through 6] shall be computed in each billing cycle by any of the following methods:

(a) by converting the monthly rate to a daily rate and multiplying such daily rate by the daily unpaid principal balance of the account; or

(b) by multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) by multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle.

(2) For purposes of [sections 1 through 6], "billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from such date.

(3) For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

Section 3. **Early payment.** The borrower may at any time pay all or any part of the unpaid balance in his account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. Minimum monthly payments shall be in such amount as would result in the full repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in 32-5-302(1).

Section 4. **Additional charges.** In addition to the charges permitted under [section 1], a holder of a supplementary license may contract for

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and receive the fees, costs, and expenses permitted by this chapter on other loans, subject to all the conditions and restrictions set forth in the applicable provisions of this chapter with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay, in the case of credit life insurance, the total balance of the loan due on the date of the borrower's death or, in the case of credit disability insurance, all minimum payments that become due on the loan during the covered period of disability. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the commissioner of insurance, to the unpaid balances in the borrower's account, using either of the methods specified in [section 2] for the calculation of loan charges.

(2) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

Section 5. **Security.** A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain any such security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain any such security interest until the open-end account is terminated; however, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within 10 days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan.

Section 6. **Provisions not applicable.** The provisions of subsections (5) and (6) of 32-5-301 and the provisions of 32-5-304 do not apply to open-end loans.

Section 7. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 32, chapter 5, and the provisions of Title 32, chapter 5, apply to sections 1 through 6.

Approved March 31, 1981.

CHAPTER NO. 219

AN ACT TO PROVIDE THAT A PORTION OF THE TAX IMPOSED ON TABLE WINE SOLD IN STATE LIQUOR STORES IS MADE AVAILABLE TO THE EARMARKED REVENUE ACCOUNT; AMENDING SECTION 16-1-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine. (1) A tax of 20 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

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(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following receipt of the table wine at the table wine distributor's warehouse.

(b) *The tax on table wine imported by the department shall be collected at the time of sale.*

(3) The tax paid by a table wine distributor *in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b)* shall be distributed *as follows:*

(a) 16 cents to the state general fund; and

(b) of the remaining 4 cents, one-third to the earmarked revenue account to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism, one-third to the counties, based on population, for the purpose established in 16-1-404, and one-third to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Approved March 31, 1981.

CHAPTER NO. 220

AN ACT FOR ADJUSTING THE REGISTRATION DATE FOR AIRCRAFT TO ELIMINATE CONFLICTS WITH OTHER TAXATION LAWS; AMENDING SECTIONS 15-24-304, 67-3-201, AND 67-3-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-304, MCA, is amended to read:

"15-24-304. Prorated taxes — aircraft. A person who acquires an aircraft required to be registered under subsections (2) through (6) of 67-3-201 after *June 1* in any year shall register the aircraft within 30 days of acquiring it. The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 15-24-303."

Section 2. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing. (1) Except as provided in 67-3-102, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the department and the registration with the department is in force.

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(2) Aircraft customarily kept in this state shall be registered with the department, which may charge a fee therefor of not more than $10. The registration shall be renewed annually on or before *June 1* each year.

(3) Section 67-3-202 and subsections (2) through (6) of this section shall not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Except as provided in 15-6-210, all aircraft shall be subject to all state, county, and school district tax levies and all other levies designated for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies.

(6) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation."

Section 3. Section 67-3-202, MCA, is amended to read:

"67-3-202. Penalty for registration violations. (1) When an aircraft required to be registered under the provisions of subsections (2) through (6) of 67-3-201 is not registered on or before *June 1* of the current calendar year, a penalty fee of $100 shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) Except for aircraft exempt from property taxation as provided in 15-6-210, an application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who

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attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor."

Approved March 31, 1981.

CHAPTER NO. 221

AN ACT AMENDING SECTION 19-4-302, MCA, TO ALLOW PARTICIPATION IN THE TEACHERS' RETIREMENT SYSTEM BY PERSONS EMPLOYED AS TEACHERS BY SPECIAL EDUCATION COOPERATIVES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-302, MCA, is amended to read:

"19-4-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system, except as provided in 19-4-305;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, *a special education cooperative,* a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

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(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

Approved March 31, 1981.

CHAPTER NO. 222

AN ACT TO ALLOW CREDITORS TO CHARGE A LATE PAYMENT CHARGE OF 1 ½ PERCENT ON ACCOUNTS RECEIVABLE FOR MERCHANDISE SOLD AT RETAIL, STARTING 30 DAYS AFTER THE OBLIGATION IS INCURRED; TO REQUIRE CREDITORS TO SUPPLY DEBTORS WITH A PERIODIC STATEMENT OF SUCH ACCOUNTS; AND PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Late payment charges permitted on accounts receivable for merchandise sold at retail.** (1) Notwithstanding 31-1-106 or 31-1-107, a person who sells goods, as defined in 31-1-202, at retail to a retail buyer who promises to pay for such goods upon presentation of the bill therefor, may charge and collect a late payment charge not greater than 1 ½ % per month on all money due on all accounts from 30 days after the date on which the obligation of the buyer to pay is incurred.

(2) The late payment charge provided in this section may be charged only if at the time the obligation was incurred the seller did not intend to extend any credit beyond 30 days and any late payment of the obligation was unintended.

(3) The provisions of this section do not apply to money due for intangible services, for services regulated by the public service commission, for real property, for health care services, or for retail installment sales contracts or retail charge account agreements regulated under Title 31, chapter 1, part 2.

Section 2. **Periodic statement to be furnished to debtor.** (1) A seller may charge the late payment charge provided for in [section 1] only if he promptly supplies the buyer with a statement as of the end of each monthly period, or other regular period agreed upon by the seller and the buyer, in which there is any unpaid balance. Such statement shall recite the following:

(a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;

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(b) the unpaid balance at the beginning or end of the period;

(c) an identification of any amounts debited to the buyer's account during the period;

(d) the payments made by the buyer to the seller during the period;

(e) the amount of the late payment charge and also the percentage annual simple interest equivalent of such amount; and

(f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

Section 3. **Limitation on applicability.** The late payment charge allowed in section 1 may be allowed to a seller only on obligations incurred after July 1, 1981.

Section 4. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to sections 1 and 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1981.

CHAPTER NO. 223

AN ACT ALLOWING FOR AN EXTENDED APPROVAL PERIOD OF MORE THAN 1 YEAR FOR A PRELIMINARY PLAT UNDER THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, *except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.*

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within *the original or extended approval period as provided in subsection (1).*"

Approved March 31, 1981.

CHAPTER NO. 224

AN ACT ADOPTING THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Multistate Highway Transportation Agreement — enactment and text.** The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. **Findings.** The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

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Section 2. **Purposes.** The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

Article II. Definitions

Section 1. As used in this agreement:

(a) "designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "jurisdiction" means a state of the United States or the District of Columbia;

(c) "vehicle" means any vehicle as defined by statute to be subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. **Qualifications for membership.** Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. **Cooperation.** The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. **Effect of headings.** Article and section headings contained herein may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. **Vehicle laws and regulations.** This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

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Section 5. **Interpretation.** The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. **Amendment.** This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. **Restrictions, conditions, or limitations.** Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. **Additional jurisdictions.** Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee that shall have the power to:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it considers appropriate or desirable. Copies of all such reports shall be made available to the transportation committee

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of the western conference, council of state governments, and to the western association of state highway and transportation officials.

Article V. Objectives of the Participating Jurisdictions

Section 1. **Objectives.** The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/N - 1) + 12N + 36)$$

where W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds;

L = distance in feet between the extremes of any group of two or more consecutive axles;

N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to;

(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;

(d) it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and

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administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent;

(e) in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards.

Article VI. Entry into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

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Article X. State Government Departments
Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee.

Approved March 31, 1981.

CHAPTER NO. 225

AN ACT TO GENERALLY REVISE THE LAWS REGULATING NOTARIES PUBLIC; REMOVING THE POWER AND DUTY OF NOTARIES PUBLIC TO DEMAND ACCEPTANCE AND PAYMENT OF BILLS OF EXCHANGE; REVISING THE FEES THAT MAY BE CHARGED BY NOTARIES PUBLIC; AMENDING SECTIONS 1-5-416 AND 1-5-418, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. A notary public shall:

(1) take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of such proof or acknowledgment, endorsed on or attached to the instrument;

(2) take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of his office or to be used before any court, judge, officer, or board in this state;

(3) whenever requested and upon payment of his fees therefor, make and give a certified copy of any record in his office;

(4) provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary and at least the initials of his given name;

(5) authenticate with his official seal all official acts. Whenever the notary public signs his name officially as a notary public, he shall add to his signature the words "Notary Public for the State of Montana, residing at.... (stating the name of his post office)" and shall endorse upon the instrument the date of the expiration of his commission."

Section 2. Section 1-5-418, MCA, is amended to read:

"1-5-418. Fees of notaries. Fees of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which provision is not herein made, *$3.50 per page*;

(2) for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, $1;

(3) for each additional signature, 50 cents;

(4) for administering an oath or affirmation, *$1*;

(5) for certifying an affidavit, with or without seal, including oath, *$1*."

Approved March 31, 1981.

CHAPTER NO. 226

AN ACT PROVIDING FOR SAFETY INSPECTIONS FOR MOTOR CARRIERS; PROVIDING FOR IMPLIED CONSENT TO INSPECTIONS BY MOTOR CARRIERS; AMENDING SECTIONS 44-1-1005, 61-10-141, 69-12-201, AND 69-12-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1005, MCA, is amended to read:

"**44-1-1005. Enforcement of motor carriers' law.** A highway patrolman has the same authority to enforce provisions of the motor carriers' law as that granted the public service commission under 69-12-203. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Section 2. Section 61-10-141, MCA, is amended to read:

"**61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads.** (1) A peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by 61-10-101 through 61-10-110, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

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(4) In addition to other enforcement duties assigned under this section, an employee of the department has the same authority to enforce provisions of the motor carriers' law as that granted the public service commission under 69-12-203. This section does not relieve the public service commission from its responsibility as the lead agency as required in 69-12-201 through 69-12-203 and 69-12-205. The commission, highway patrol, and the department shall cooperate to assure minimum duplication and maximum coordination of enforcement effort."

Section 3. Section 69-12-201, MCA, is amended to read:

"69-12-201. Supervision and regulation of motor carriers. (1) The commission is hereby vested with power and authority and it is hereby made its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, affairs, and safety of operations of all motor carriers, *each of which is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier*;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers; and

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.

(2) The commission shall have power and authority by general order or otherwise to prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission also may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when the same are required for the best interests of public transportation."

Section 4. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this chapter, as amended, or the rules or orders prescribed thereunder by the commission.

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(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of this chapter, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles, *make reasonable safety inspections of commercial motor vehicles utilized by motor carriers,* and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of such vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."

Approved March 31, 1981.

CHAPTER NO. 227

AN ACT PROVIDING FOR SAFETY STANDARDS AND INSPECTIONS FOR MOTOR VEHICLES USED IN COMMERCE WEIGHING IN EXCESS OF 26,000 POUNDS GROSS VEHICLE WEIGHT; AMENDING SECTIONS 69-12-102 AND 69-12-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) *Except as provided in 69-12-201(1)(f) this* chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

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(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances; or

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 2. Section 69-12-201, MCA, is amended to read:

"69-12-201. Supervision and regulation of motor carriers and other motor vehicles used in commerce. (1) The commission is hereby vested with power and authority and it is hereby made its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, affairs, and safety of operations of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public*; and*

(f) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles, and vehicles of less than 26,000 pounds gross vehicle weight if they are:

(i) being used to transport passengers for hire; or

(ii) being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the commission. Such standards of safety shall be the same as prescribed for motor carriers, and the same inspection standards and procedures shall apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

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(2) The commission shall have power and authority by general order or otherwise to prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission also may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when the same are required for the best interests of public transportation."

Approved March 31, 1981.

CHAPTER NO. 228

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND THE FAMILY; AMENDING SECTIONS 40-1-203, 40-1-205, 40-8-126, 50-15-101, 50-15-108, 50-15-111, 50-15-301, 50-15-303, 50-15-304, AND 50-20-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-203, MCA, is amended to read:

"40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213 and shall file with him a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test, *performed* not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test."

Section 2. Section 40-1-205, MCA, is amended to read:

"40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana if such tests are performed not more than 20 days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard

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serological tests and were performed not more than 20 days before the issuance of the marriage license."

Section 3. Section 40-8-126, MCA, is amended to read:

"40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; *or*

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown *or as provided in 50-15-206.*"

Section 4. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation which is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

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(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data."

Section 5. Section 50-15-108, MCA, is amended to read:

"50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, *dissolution of marriage, or invalid marriage* upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility."

Section 6. Section 50-15-111, MCA, is amended to read:

"50-15-111. Certified copy fee. (1) The department shall prescribe a fee of not less than *$3* for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited *as follows:*

(a) $1 shall be deposited in an earmarked revenue fund to be used by the department for the maintenance of indexes to and costs for the preservation of vital records; and

(b) the remainder shall be deposited in the state general fund."

Section 7. Section 50-15-301, MCA, is amended to read:

"50-15-301. Marriage certificates. Before the *10th* day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license."

Section 8. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the *10th* day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department."

Section 9. Section 50-15-304, MCA, is amended to read:

"50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

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(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 10. Section 50-20-110, MCA, is amended to read:

"50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion

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to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212."

Section 11. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 1981.

CHAPTER NO. 229

AN ACT TO PROHIBIT A LIFE INSURER FROM CONTRACTING OR AGREEING TO NAME A FUNERAL DIRECTOR, UNDERTAKER, OR MORTUARY AS BENEFICIARY UNDER AN INSURANCE CONTRACT; AMENDING SECTION 33-18-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) No life insurer may own, manage, supervise, operate, or maintain any mortuary,

funeral, or undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business *in Montana.*

(2) No life insurer may contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral *or be named beneficiary* of any person insured by such insurer. *This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.*

(3) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months or by both such fine and imprisonment."

Approved April 1, 1981.

CHAPTER NO. 230

AN ACT TO LIMIT THE CONDEMNATION POWER OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTIONS 23-1-102 AND 87-1-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation *for the purposes outlined in 87-1-209(2)* acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part."

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Section 2. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

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(4) Notwithstanding the provisions of 18-4-102, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Approved April 1, 1981.

CHAPTER NO. 231

AN ACT TO CLARIFY WHEN A VOTE OF ELECTORS IS REQUIRED TO INCUR AN INDEBTEDNESS ON BEHALF OF A LOCAL GOVERNMENT FOR AIRPORT PURPOSES; AMENDING SECTION 67-10-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. (1) For the purpose of establishing, constructing, equipping, maintaining, and operating airports and landing fields under the provisions of this chapter, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax of not to exceed 2 mills on the dollar of taxable value of the property of said county, city, or town.

(2) In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture must pay.

(3) No property within any political subdivision may be subject to a tax pursuant to this section at an annual rate in excess of 2 mills unless it is found that the levy is insufficient for the purposes enumerated. In such a case the commissioners and councils acting are authorized and empowered to contract an indebtedness on behalf of such county, city, or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors and a majority vote cast therefor, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

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(b) the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from such investments must be credited to the operations and maintenance budget of the airport governing body. The above provisions, notwithstanding other budget control measures and due to the uniqueness of the subject matter, are declared necessary in the interests of the public health and safety."

Approved April 1, 1981.

CHAPTER NO. 232

AN ACT TO REQUIRE STATE AGENCIES TO REPORT THE APPARENT THEFT OF STATE MONEY OR PROPERTY TO THE ATTORNEY GENERAL AT THE SAME TIME IT IS REPORTED TO THE LEGISLATIVE AUDITOR; AMENDING SECTION 5-13-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-309, MCA, is amended to read:

"5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify *both the attorney general and* the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which he is responsible."

Approved April 1, 1981.

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CHAPTER NO. 233

AN ACT TO REVISE THE PROVISIONS ON MUNICIPAL VACANCY IN OFFICE TO INCLUDE THE SAME GROUNDS APPLICABLE TO VACANCY IN STATE OFFICES; AMENDING SECTION 7-4-4111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4111, MCA, is amended to read:

"7-4-4111. Determination of vacancy in municipal office. *An* office becomes vacant *on the happening of any of the following events before the expiration of the term of the incumbent:*

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that he is mentally ill;

(3) his resignation;

(4) his removal from office;

(5) his absence from the city or town continuously for 10 days without the consent of the council*;*

(6) his open neglect or *refusal* to discharge his duties*;*

(7) his ceasing to be a resident of the city or town or*, in the case of an* alderman*, his ceasing to be a resident of* his ward*;*

(8) his ceasing to discharge the duty of his office for a period of 3 consecutive months, except when prevented by illness or when absent from the city or town by permission of the governing body;

(9) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(10) his refusal or neglect to file his official bond within the time prescribed;

(11) the decision of a competent tribunal declaring void his election or appointment."

Approved April 1, 1981.

CHAPTER NO. 234

AN ACT ALLOWING THE BOARD OF PARDONS TO DELEGATE CERTAIN HEARING FUNCTIONS; AMENDING SECTION 46-23-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-104, MCA, is amended to read:

"46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

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(2) The board shall meet at least twice each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings."

Approved April 1, 1981.

CHAPTER NO. 235

AN ACT PROVIDING FOR THE DISTRIBUTION OF ADMINISTRATIVE EXPENSES OF THE PUBLIC EMPLOYEES' RETIREMENT DIVISION OF THE DEPARTMENT OF ADMINISTRATION AMONG THE JUDGES', HIGHWAY PATROL, SHERIFFS', GAME WARDENS', AND MUNICIPAL POLICE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-5-202, 19-6-203, 19-7-202, 19-8-203, AND 19-9-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-202, MCA, is amended to read:

"**19-5-202. Administrative expenses.** (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, *may* be paid from the fund.

(2) Before July 15 of each year, the board *may* compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund."

Section 2. Section 19-6-203, MCA, is amended to read:

"**19-6-203. Administrative expenses.** *(1)* The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, *may* be paid *from the fund.*

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund."

Section 3. Section 19-7-202, MCA, is amended to read:

"**19-7-202. Expenses of administration.** *(1)* The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, *may* be paid *from the fund.*

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(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund."

Section 4. Section 19-8-203, MCA, is amended to read:

"19-8-203. Expenses of administration. *(1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.*

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund.

(3) In addition to the amount provided in subsection (2), the board may assess and the department of administration *may* collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering this chapter."

Section 5. Section 19-9-203, MCA, is amended to read:

"19-9-203. Administrative expenses. *(1)* The expense of administration of this chapter, exclusive of amounts required to be paid as benefits to or on behalf of a member, *may* be *paid from the fund.*

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund."

Approved April 1, 1981.

CHAPTER NO. 236

AN ACT TO ELIMINATE CERTAIN DUTIES OF THE DEPARTMENT OF COMMUNITY AFFAIRS UNDER THE MONTANA SUBDIVISION AND PLATTING ACT TO ESTABLISH MINIMUM SUBDIVISION REGULATION REQUIREMENTS FOR LOCAL GOVERNMENTS; AMENDING SECTIONS 76-3-504, 76-3-603, AND 76-4-129, MCA; AND REPEALING SECTIONS 76-3-502 AND 76-3-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. *The subdivision regulations adopted under this chapter shall, at a minimum:*

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

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(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 2. Section 76-3-603, MCA, is amended to read:

"76-3-603. Contents of environmental assessment. Where required, the environmental assessment shall accompany the preliminary plat and shall include:

(1) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available groundwater information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(2) maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts;

(3) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection;

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(4) such additional relevant and reasonable information as may be required by the *governing body*."

Section 3. Section 76-4-129, MCA, is amended to read:

"76-4-129. Joint application form and concurrent review. (1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently."

Section 4. **Repealer.** Sections 76-3-502 and 76-3-508, MCA, are repealed.

Approved April 1, 1981.

CHAPTER NO. 237

AN ACT TO CLARIFY THE AUTHORITY OF A RURAL ELECTRIC OR TELEPHONE COOPERATIVE TO PROVIDE IN ITS BYLAWS FOR THE ESTABLISHMENT OF AN AMOUNT OF COMPENSATION TO BE PAID TO ITS DIRECTORS WHILE ENGAGED IN OFFICIAL BUSINESS OF THE COOPERATIVE; AMENDING SECTION 35-18-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-311, MCA, is amended to read:

"35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that the board of trustees *may establish a fixed sum, including expenses of attendance, if any, to be allowed for:*

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(a) attendance at each meeting of the board of trustees or any committee thereof; or

(b) representing the cooperative at any meeting or on any business whenever such representation has been approved by the board.

(3) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee."

Approved April 1, 1981.

CHAPTER NO. 238

AN ACT TO PROVIDE THAT 90 PERCENT OF THE PROPERTY TAX COLLECTED BY A COUNTY ON AIRLINE FLIGHT PROPERTY BY REASON OF A STATE AIRPORT BEING LOCATED IN THE COUNTY BE PAID TO THE STATE TREASURER TO BE DEPOSITED IN THE EARMARKED REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF COMMUNITY AFFAIRS FOR AERONAUTICAL PURPOSES; AMENDING SECTION 15-23-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-106, MCA, is amended to read:

"15-23-106. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 15-23-302, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; *90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county shall be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;*

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department."

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Section 2. **Airline property tax — state airports.** (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the earmarked revenue fund to the credit of the department of community affairs for the purposes provided for in 67-1-301.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 67, chapter 1, part 3, and the provisions of Title 67, chapter 1, part 3, apply to section 2.

Approved April 1, 1981.

CHAPTER NO. 239

AN ACT TO ESTABLISH THE CRIMINAL OFFENSE OF FAILURE TO RETURN RENTED OR LEASED PERSONAL PROPERTY; ESTABLISHING A PENALTY THEREFOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Failure to return rented or leased personal property.** (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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(b) A person convicted of failure to return rented or leased personal property exceeding $150 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1981.

CHAPTER NO. 240

AN ACT TO ALLOW PHYSICAL THERAPISTS TO EVALUATE WITHOUT REFERRAL; AMENDING SECTION 37-11-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-104, MCA, is amended to read:

"37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy *evaluation* includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the *development, but not the implementation, of a plan* of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation procedures listed in subsection (1) may be performed by a licensed physical therapist without referral from physicians, osteopaths, dentists, or podiatrists but treatment may be rendered only to patients referred by physicians, osteopaths, dentists, or podiatrists."

Approved April 2, 1981.

CHAPTER NO. 241

AN ACT AMENDING SECTION 16-1-411, MCA, TO STANDARDIZE THE TIMING OF IMPOSITION OF THE TABLE WINE TAX ON WINE DISTRIBUTORS; TO IMPOSE A PENALTY AND INTEREST CHARGE FOR FAILURE OF A TABLE WINE DISTRIBUTOR TO FILE A RETURN OR TO PAY TAX ON IMPORTED TABLE WINE; TO PROVIDE A TRANSITION PERIOD; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine. (1) A tax of 20 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

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(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following *sale* of the table wine *from* the table wine distributor's warehouse. *Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.*

(b) The tax paid by a table wine distributor shall be distributed 16 cents to the state general fund; and of the remaining 4 cents one-third to the earmarked revenue account to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism, one-third to the counties, based on population, for the purpose established in 16-1-404, and one-third to the cities and towns, based on population, for the purpose established in 16-1-405.

(3) The tax on table wine imported by the department shall be collected at the time of sale, be retained in a separate account, and be deposited with the state treasurer to the credit of the general fund not later than the 10th day of the month following the sale.

(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Section 2. **Transition.** Each table wine distributor shall take inventory of all table wine in his warehouse at the close of business on June 30, 1981, and shall file his sworn statement thereof with the department within 7 days thereafter. He is liable for the tax on all wine received by him during the month of June 1981, under the provisions of 16-1-411 prior to its amendment by this act, and such tax is due on July 15, 1981. He is liable for the tax on all wine sold by him in the month of July 1981, under the provisions of this act, and such tax is due on August 15, 1981. He may claim as a credit against the wine tax due on July 15, 1981, and any following months until the credit is exhausted, 20 cents multiplied by the number of liters of table wine in his warehouse at the close of business June 30, 1981.

Section 3. **Effective date.** This act is effective on June 1, 1981.

Approved April 2, 1981.

CHAPTER NO. 242

AN ACT TO REQUIRE ANY PERSON, FIRM, CORPORATION, OR ASSOCIATION THAT PERFORMS INVESTIGATIONS OR REVIEWS FOR A STATE PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD TO MAKE THE RECORDS OF THE REVIEW OR INVESTIGATION AVAILABLE TO THE BOARD AND THE LEGISLATIVE AUDITOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Licensing investigation and review — record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an

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agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of section 1 apply to Title 37.

Approved April 2, 1981.

CHAPTER NO. 243

AN ACT TO REESTABLISH THE BOARD OF MEDICAL EXAMINERS UNDER EXISTING STATUTORY AUTHORITY AND RULES; ADDING PUBLIC MEMBERS TO THE BOARD; CHANGING BOARD MEMBERS' TERMS FROM 7 TO 4 YEARS; MODIFYING REPORTING REQUIREMENTS FOR MEDICAL MALPRACTICE CLAIMS BY INSURERS; AMENDING SECTIONS 2-8-103, 2-15-1605, AND 37-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Medical Examiners and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Medical Examiners be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The Montana state board of medical examiners is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

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(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

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(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

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(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605."

Section 3. Section 2-15-1605, MCA, is amended to read:

"**2-15-1605. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of *eight* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) *five* members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy*; and*

(c) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member, *except for public members,* shall have been licensed and shall have practiced medicine in this state for at least 5 years and shall have been a resident of this state for at least 5 years.

(5) *Members* shall serve *staggered 4-year terms.* A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-3-402, MCA, is amended to read:

"**37-3-402. Insurer to report to board.** Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. *A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision.* The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, *and the basis of the settlement or court decision.*"

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1981.

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CHAPTER NO. 244

AN ACT TO DELETE THE REQUIREMENT THAT APPOINTMENTS BY THE GOVERNOR OF MEMBERS TO THE BOARDS OF DENTISTRY, PODIATRY EXAMINERS, PHARMACISTS, NURSING HOME ADMINISTRATORS, SPEECH PATHOLOGISTS AND AUDIOLOGISTS, HEARING AID DISPENSERS, VETERINARIANS, AND PHYSICAL THERAPISTS BE MADE FROM LISTS SUBMITTED BY PRIVATE ASSOCIATIONS; PROVIDING THAT THE GOVERNOR MAY CONSIDER NOMINEES BY LICENSEES, PRIVATE ASSOCIATIONS, AND MEMBERS OF THE PUBLIC WHEN MAKING APPOINTMENTS TO LICENSING AND REGULATORY BOARDS; AMENDING SECTIONS 2-15-1606, 2-15-1608, 2-15-1609, 2-15-1611, 2-15-1615, 2-15-1616, 2-15-1618, AND 2-15-1628, MCA.

WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1606, MCA, is amended to read:

"2-15-1606. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists and one dental hygienist, all appointed by the governor. Each member shall be licensed to practice a dental profession in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 2-15-1608, MCA, is amended to read:

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"2-15-1608. Board of podiatry examiners. (1) There is a board of podiatry examiners.

(2) The board consists of three members, all of whom are licensed podiatrists appointed by the governor to 3-year terms. The members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least 2 years and are of high integrity and ability.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 2-15-1609, MCA, is amended to read:

"2-15-1609. Board of pharmacists. (1) There is a board of pharmacists.

(2) The board consists of three members appointed by the governor. Each member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy. Each member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. However, one member may be a registered pharmacist of 15 years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of 3 years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1611, MCA, is amended to read:

"2-15-1611. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor. No more than two members shall be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences or his designee and the director of the department of social and rehabilitation services or his designee are ex officio, nonvoting members of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term.

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(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 2-15-1615, MCA, is amended to read:

"2-15-1615. Board of speech pathologists and audiologists. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five members *who* shall:

(a) be appointed by the governor;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech pathology or audiology.

(4) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 6. Section 2-15-1616, MCA, is amended to read:

"2-15-1616. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor. The members are:

(a) one member *who* shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;

(b) one member *who* shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association;

(c) three members *who* have been qualified dispensers and fitters of hearing aids for at least 5 years before their appointment to the board.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 7. Section 2-15-1618, MCA, is amended to read:

"2-15-1618. Board of veterinarians. (1) There is a board of veterinarians.

(2) The board consists of six members appointed by the governor, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of professional and occupational licensing.

(3) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 8. Section 2-15-1628, MCA, is amended to read:

"2-15-1628. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of three members appointed by the governor for a term of 3 years.

(3) Each member must have been a resident of Montana and a practicing physical therapist for the 3 years preceding appointment to the board.

(4) Within 30 days following July 1, 1979, the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may only be made for the unexpired portions of the term.

(6) No member may be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

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(9) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 9. **Nominees for appointment to licensing and regulatory boards.** Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

Section 10. **Codification instruction.** Section 9 is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of section 9 apply to Title 37.

Approved April 2, 1981.

CHAPTER NO. 245

AN ACT TO ALLOW FAMILY MEMBERS THE RIGHT TO CONTINUE INDIVIDUAL FAMILY DISABILITY INSURANCE COVERAGE UPON THE DEATH OF THE NAMED INSURED OR THE DIVORCE, SEPARATION, OR ANNULMENT OF MARRIAGE OF THE SPOUSE FROM THE NAMED INSURED; AND TO ESTABLISH CONDITIONS AND REQUIREMENTS OF CONTINUED COVERAGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Individual Family Disability Insurance Continuity of Coverage Act".

Section 2. **Purpose.** The purpose of this [act] is to provide for the right of covered family members under individual family disability insurance policies to continuity of coverage upon the death of the named insured, the divorce, annulment of marriage, or legal separation of the spouse from the named insured, or any other condition specifically stated in such disability insurance policies under which coverage would otherwise terminate as to the covered spouse or covered dependent children of the named insured.

Section 3. **Continuity of coverage.** (1) Subject to the requirements of this [act] and on the date specified in the policy under which coverage otherwise terminates as to covered family members, other than for nonpayment of premium, nonrenewal of the policy, or the expiration of the term for which the policy is issued, a covered person (other than one eligible for medicare or any other similar federal or state disability insurance program), including the spouse and any covered dependent child of the last-named insured or the representative of such child, has the right to continuation of coverage under provisions that, at the option of the carrier, are consistent with:

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(a) the continuation of the policy with the person exercising the right of continuation designated as the named insured;

(b) the issuance of a converted policy with the person exercising the conversion right designated as the named insured; or

(c) both (a) and (b).

(2) When continuation of coverage or conversion is made in the name of the spouse of the named insured, the coverage may, at the option of the spouse, include covered dependent children for whom the spouse has the responsibility for care and support.

Section 4. **Form of coverage — requirements — evidence of insurability — preexisting conditions.** (1) Coverage continued through the issuance of a converted policy shall consist of the form of coverage then being offered by the carrier as a conversion policy in the jurisdiction where the person exercising the conversion right resides that most nearly approximates the coverage of the policy from which conversion is exercised. Continued and converted coverages, other than those provided through the exercise of continuation or conversion rights contained in optionally renewable or limited right of renewal contracts, must contain:

(a) provisions allowing the person exercising the continuation or conversion the right to renew the coverage until the attainment of the age of eligibility for medicare or any other similar federal or state disability insurance program, subject to the right of the carrier to nonrenew all such policies in this state as a class; or

(b) other renewal provisions that are not less favorable to the insured than those contained in the policy from which conversion is exercised.

(2) Coverage provided through continuation or conversion may not require additional evidence of insurability except as to overinsurance and may not impose any preexisting condition limitations or other contractual time limitations other than those remaining unexpired under the policy or contract from which continuation or conversion is exercised.

Section 5. **Notice.** The eligible covered family member exercising the continuation or conversion right must notify the carrier and make payment of the applicable premium within 31 days following the date such coverage otherwise terminates as specified in the policy or contract from which continuation or conversion is being exercised.

Section 6. **Nonduplication.** Benefits otherwise payable under a converted policy may be reduced:

(1) so they are not, during the first policy year of the converted policy, in excess of those benefits that would have been payable had the coverage under the policy from which conversion is exercised not terminated; and

(2) by the amount of benefits, if any, payable as to the same loss under the policy from which conversion is exercised.

Section 7. **Overinsurance.** The carrier is not required to issue a converted policy if at the time of application the applicant:

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(1) (a) has coverage under other disability insurance policies, health service corporation contracts, or self-insured health benefit plans providing similar benefits;

(b) is eligible for coverage under a group policy or contract providing similar benefits;

(c) is provided with similar benefits required by any statute; or

(d) is covered under any national, state, or governmental plan; and

(2) has coverage under subsection (1) that, together with the converted policy, would result in overinsurance according to the carrier's underwriting standards.

Section 8. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, chapter 22, part 3, and the provisions of Title 33 apply to this act.

Section 9. **Applicability.** The provisions of this act apply to individual family disability insurance policies providing hospital, surgical, and medical expense benefits or hospital confinement indemnity benefits and individual family health service corporation contracts delivered or issued for delivery in this state on and after [120 days after the effective date of this act]. This act does not apply to disability income policies, accidental death or dismemberment policies, or single-term, nonrenewable policies.

Approved April 2, 1981.

CHAPTER NO. 246

AN ACT TO SPECIFY THE DISCIPLINARY AUTHORITY OF LICENSING BOARDS IN THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING.

WHEREAS, during its sunset review of licensing boards, the Legislative Audit Committee noted that disciplinary authority of some boards over licensees is not specified in the law and that consequently some boards are hesitant to take disciplinary action against licensees.

THEREFORE, it is the intent of this act to specify the disciplinary authority of the boards allocated to the Department of Professional and Occupational Licensing.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disciplinary authority of boards — injunctions.** (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

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(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 1, part 1.

Approved April 2, 1981.

CHAPTER NO. 247

AN ACT TO PROVIDE FOR SENATE CONFIRMATION OF MEMBERS OF THE BOARDS OF COUNTY PRINTING, DENTISTRY, OSTEOPATHIC PHYSICIANS, PODIATRY EXAMINERS, PHARMACISTS, NURSING, NURSING HOME ADMINISTRATORS, OPTOMETRISTS, CHIROPRACTORS, RADIOLOGIC TECHNOLOGISTS, SPEECH PATHOLOGISTS AND AUDIOLOGISTS, HEARING AID DISPENSERS, PSYCHOLOGISTS, VETERINARIANS, BARBERS, COSMETOLOGISTS, MASSAGE THERAPISTS, PHYSICAL THERAPY EXAMINERS, SANITARIANS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, PLUMBERS, ATHLETICS, AND VETERANS' AFFAIRS, AND THE COMMISSION FOR HUMAN RIGHTS; AMENDING SECTIONS 2-15-1102, 2-15-1606 THROUGH 2-15-1618, 2-15-1625 THROUGH 2-15-1628, 2-15-1631, 2-15-1652, 2-15-1653, 2-15-1655, 2-15-1661, 2-15-1706, AND 2-15-2202, MCA.

WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

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THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1102, MCA, is amended to read:

"2-15-1102. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor *with the consent of the senate* for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;

(b) two county commissioners;

(c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed as are members of advisory councils in 2-15-122."

Section 2. Section 2-15-1606, MCA, is amended to read:

"2-15-1606. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists and one dental hygienist, all appointed by the governor *with the consent of the senate.* The Montana dental association and the Montana dental hygienists' association shall each present to the governor, within 15 days after its regular annual meeting, a list of not less than five candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three members of the board shall be appointed from the list of candidates submitted by the Montana dental association and one member shall be appointed from the list submitted by the Montana dental hygienists' association. Each member shall be licensed to practice a dental profession in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 2-15-1607, MCA, is amended to read:

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"2-15-1607. Board of osteopathic physicians. (1) There is a board of osteopathic physicians.

(2) The board consists of three members appointed by the governor *with the consent of the senate.* Each member shall be a qualified practicing resident osteopath and a graduate of a legally authorized school of osteopathy.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1608, MCA, is amended to read:

"2-15-1608. Board of podiatry examiners. (1) There is a board of podiatry examiners.

(2) The board consists of three members, all of whom are licensed podiatrists appointed by the governor *with the consent of the senate* to 3-year terms, selected from a list of six podiatrists submitted by the Montana association of podiatrists. The members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least 2 years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 2-15-1609, MCA, is amended to read:

"2-15-1609. Board of pharmacists. (1) There is a board of pharmacists.

(2) The board consists of three members appointed by the governor *with the consent of the senate.* The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy. Each member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. However, one member may be a registered pharmacist of 15 years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of 3 years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 6. Section 2-15-1610, MCA, is amended to read:

"2-15-1610. Board of nursing. (1) There is a board of nursing.

(2) The board consists of eight members appointed by the governor *with the consent of the senate.* The members are:

(a) five registered professional nurses who constitute the board—professional nursing administration. At least three members shall have had at least 3 years in administrative, teaching, or supervisory experience in schools of nursing. Each member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed nurse in this state;

(iii) have had at least 5 years' experience in nursing following graduation; and

(iv) have been actively engaged in nursing for at least 3 years immediately before appointment.

(b) three practical nurses who constitute the board—practical nursing administration. Each member shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 3 years' experience as a practical nurse; and

(iv) have been actively engaged in the practice of practical nursing for at least 2 years immediately before appointment.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) All members shall serve for a term of 5 years, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 7. Section 2-15-1611, MCA, is amended to read:

"2-15-1611. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor *with the consent of the senate.* No more than two members shall be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

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(3) The director of the department of health and environmental sciences or his designee and the director of the department of social and rehabilitation services or his designee are ex officio, nonvoting members of the board.

(4) The appointee representing the public at large shall be selected by the governor. The remaining appointees shall be selected from a list of three nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.

(5) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term in the same manner provided for in subsection (4).

(6) Appointive members may be removed by the governor only for cause.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 8. Section 2-15-1612, MCA, is amended to read:

"2-15-1612. Board of optometrists. (1) There is a board of optometrists.

(2) The board consists of four members appointed by the governor *with the consent of the senate.* Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 9. Section 2-15-1613, MCA, is amended to read:

"2-15-1613. Board of chiropractors. (1) There is a board of chiropractors.

(2) The board consists of three members appointed by the governor *with the consent of the senate.* The members shall be practicing chiropractors of integrity and ability who shall be residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. No two members shall be graduates of the same school or college of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 10. Section 2-15-1614, MCA, is amended to read:

"2-15-1614. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor *with the consent of the senate*:

(a) two members shall be radiologists licensed to practice medicine in Montana;

(b) one member shall be a physician licensed to practice medicine in Montana;

(c) one member shall be a chiropractor licensed to practice in Montana; and

(d) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 11. Section 2-15-1615, MCA, is amended to read:

"2-15-1615. Board of speech pathologists and audiologists. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five members, four of whom shall:

(a) be appointed by the governor *with the consent of the senate* from names submitted to him by the Montana speech and hearing association;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech pathologists and at least two shall be audiologists, with the remaining member to be a public member, *appointed by the governor with the consent of the senate,* who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech pathology or audiology.

(4) Not less than 60 days before the end of each calendar year, the association shall recommend at least three and not more than five persons for each vacancy occurring at the end of the calendar year. In the event of a vacancy for an unexpired term, the association shall expeditiously recommend at least two and not more than three persons to fill the vacancy

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and the governor shall appoint one of those persons to fill the unexpired term.

(5) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 12. Section 2-15-1616, MCA, is amended to read:

"2-15-1616. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor *with the consent of the senate.* The members are:

(a) one member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.

(b) one member appointed from a list submitted by the Montana speech and hearing association. This member shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association.

(c) three members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least 5 years before their appointment to the board.

(d) one alternate member shall be appointed from each of the three lists to serve when a regular member cannot attend a scheduled meeting.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same list as the member whose term was not completed.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 13. Section 2-15-1617, MCA, is amended to read:

"2-15-1617. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of three members appointed by the governor *with the consent of the senate.* The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state. A member may not succeed himself but may be reappointed after 3 years following the termination of his previous appointment. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 3 years."

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Section 14. Section 2-15-1618, MCA, is amended to read:

"2-15-1618. Board of veterinarians. (1) There is a board of veterinarians.

(2) The board consists of six members appointed by the governor *with the consent of the senate*, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of professional and occupational licensing.

(3) The Montana state veterinary medical association shall, at each annual meeting, nominate twice the number of veterinarian board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.

(4) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(5) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 15. Section 2-15-1625, MCA, is amended to read:

"2-15-1625. Board of barbers. (1) There is a board of barbers.

(2) The board consists of three members appointed by the governor *with the consent of the senate*. Each member shall be a practicing barber who has been a barber in this state for at least 5 years immediately before his appointment.

(3) Each member shall serve for a term of 3 years. The governor may remove a member for cause.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 16. Section 2-15-1626, MCA, is amended to read:

"2-15-1626. Board of cosmetologists. (1) There is a board of cosmetologists.

(2) The board consists of three members who may be appointed by the governor *with the consent of the senate* from a list of six persons recommended by the Montana state hairdressers' association. Each member

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appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 17. Section 2-15-1627, MCA, is amended to read:

"2-15-1627. Board of massage therapists. (1) There is a board of massage therapists.

(2) The board consists of three members appointed by the governor *with the consent of the senate.* Each member shall be a resident of this state and shall have been a masseur continuously in this state for at least 1 year. Each member shall have integrity and ability as a masseur.

(3) Each member shall serve for a term of 3 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 18. Section 2-15-1628, MCA, is amended to read:

"2-15-1628. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of three members appointed by the governor *with the consent of the senate,* upon the recommendation of the Montana chapter of the American physical therapy association, for a term of 3 years.

(3) Each member must have been a resident of Montana and a practicing physical therapist for the 3 years preceding appointment to the board but need not be a member of the Montana chapter of the American physical therapy association.

(4) Within 30 days following July 1, 1979, the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

(5) Ninety days prior to the end of the board member's term of office a nominating committee comprised of members and nonmembers of the Montana chapter of the American physical therapy association shall submit to the governor a list of individuals qualified to serve as a member of the board. The list shall contain not less than three times the number of candidates needed to fill the vacancies.

(6) A vacancy on the board must be filled in the same manner as the original appointment, except that the names of qualified individuals must

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be submitted to the governor upon notice of a pending vacancy or within 10 days after a vacancy occurs. These appointments may only be made for the unexpired portions of the term.

(7) No member may be appointed for more than two consecutive terms.

(8) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(9) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(10) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(11) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 19. Section 2-15-1631, MCA, is amended to read:

"2-15-1631. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor *with the consent of the senate.* Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 20. Section 2-15-1652, MCA, is amended to read:

"2-15-1652. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board shall be appointed by the governor *with the consent of the senate* and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years."

Section 21. Section 2-15-1653, MCA, is amended to read:

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"2-15-1653. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of nine members appointed by the governor *with the consent of the senate.* The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two registered and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, shall not be reappointed.

(4) Each member shall serve for a term of 4 years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 22. Section 2-15-1655, MCA, is amended to read:

"2-15-1655. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor *with the consent of the senate.* The members are:

(a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 23. Section 2-15-1661, MCA, is amended to read:

"2-15-1661. Board of athletics. (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor *with the consent of the senate.*

(3) Each member shall serve for a term of 3 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 24. Section 2-15-1706, MCA, is amended to read:

"2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor *with the consent of the senate.*

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."

Section 25. Section 2-15-2202, MCA, is amended to read:

"2-15-2202. Board of veterans' affairs. (1) There is a board of veterans' affairs.

(2) The board consists of five members appointed by the governor *with the consent of the senate.* Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall serve for a term of 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply."

Approved April 2, 1981.

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CHAPTER NO. 248

AN ACT TO REESTABLISH THE BOARD OF NURSING UNDER EXISTING STATUTORY AUTHORITY AND RULES AND TO GENERALLY REVISE THE LAWS RELATING TO LICENSURE OF NURSES; MODIFYING BOARD MAKEUP; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD MEMBERS; REVISING DEFINITIONS OF NURSING; AUTHORIZING TEMPORARY NURSING PERMITS; PROVIDING FOR A LATE RENEWAL FEE; AMENDING SECTIONS 2-8-103, 2-15-1610, 37-8-102, 37-8-103, 37-8-201, 37-8-202, 37-8-301, 37-8-302, 37-8-406, 37-8-407, 37-8-409, 37-8-415 THROUGH 37-8-417, 37-8-431, 37-8-441, AND 37-8-442, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Nursing and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Nursing be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of nursing is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

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(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

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(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of nursing, department of professional and occupational licensing, created by 2-15-1610."

Section 3. Section 2-15-1610, MCA, is amended to read:

"2-15-1610. Board of nursing. (1) There is a board of nursing.

(2) The board consists of *nine* members appointed by the governor. The members are:

(a) *four* registered professional nurses; *at* least *one such member* shall have had at least 5 years in administrative, teaching, or supervisory experience in *one or more* schools of nursing *and at least one such member must be currently engaged in the administration, supervision, or provision of direct client care.* Each member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed *registered professional* nurse in this state;

(iii) have had at least 5 years' experience in nursing following graduation; and

(iv) *be currently* engaged in *the practice of professional* nursing *and have practiced* for at least 5 years.

(b) three practical nurses. Each shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 5 years' experience as a practical nurse; and

(iv) *be currently* engaged in the practice of practical nursing *and have practiced* for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) *Members shall serve staggered 4-year terms*, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1610.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of *services requiring substantial specialized knowledge of the*

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biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation *of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures leading to predictable outcomes in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.*

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college."

Section 5. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved *nursing education programs*;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Section 6. Section 37-8-201, MCA, is amended to read:

"37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter."

Section 7. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the *nine* members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve *programs* that

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meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges *which may call* for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) The board of nursing may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse, which additional education is obtained in courses offered in a university setting or its equivalent and certified by the American nurses' association. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists."

Section 8. Section 37-8-301, MCA, is amended to read:

"37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing *education program in the state* shall apply to the department and submit evidence that *it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102."*

Section 9. Section 37-8-302, MCA, is amended to read:

"37-8-302. Nursing education programs — survey and approval. (1) *It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board.* If, in the opinion of the board, the requirements for an approved *nursing education program* are met, *the program shall be granted initial or continuing approval.*

(2) *If* the board determines that *any* approved nursing *education program* is not maintaining the standards required by law and *the rules established* by the board, notice *shall be given to the nursing education program* specifying the *areas of noncompliance.* A *program that* fails to correct these *areas of noncompliance* within *the* time *designated by the*

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board shall be removed from the list of approved nursing *education programs.*"

Section 10. Section 37-8-406, MCA, is amended to read:

"37-8-406. License — professional nursing — examination — fee. *(1)* An applicant for a license to practice *as a registered* professional *nurse* is required to pass a written examination in subjects the board determines *necessary*. A written examination may be supplemented by an oral or practical examination. *The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.*

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing."

Section 11. Section 37-8-407, MCA, is amended to read:

"37-8-407. Endorsement — professional nursing. The board may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of $5 to be retained by the department."

Section 12. Section 37-8-409, MCA, is amended to read:

"37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination."

Section 13. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the *board* written evidence, verified by oath, that the applicant:

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(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) *is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses*; and

(3) meets other qualification requirements the board prescribes *in its rules*."

Section 14. Section 37-8-416, MCA, is amended to read:

"37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. *The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules.* On successfully passing the examination, the *board* shall issue to the applicant a license to practice as a licensed practical nurse."

Section 15. Section 37-8-417, MCA, is amended to read:

"37-8-417. Endorsement — licensed practical nursing. The board may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the *board*, the applicant meets the requirements for practical nurses in this state."

Section 16. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of $10 before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the

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failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by January 1 as required in subsection (1)."

Section 17. Section 37-8-441, MCA, is amended to read:

"**37-8-441. Denial, revocation, or suspension of license — grounds.** Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct;

(6) has willfully or repeatedly violated this chapter."

Section 18. Section 37-8-442, MCA, is amended to read:

"**37-8-442. Denial, revocation, or suspension of license — procedure.** (1) On filing a sworn complaint in writing with the board charging a person with violation of 37-8-441 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board."

Section 19. **Temporary work permit.** (1) The board may issue a temporary work permit for a period not to exceed 90 days to a registered professional nurse or licensed practical nurse who is currently licensed in another state, a territory of the United States, or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable.

(2) The board may issue a temporary work permit to a graduate of an approved nursing education program or approved practical nursing education program pending the results of the first licensing examination following graduation. Such permit is not renewable.

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(3) To protect the public, the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist, or registered nurse until a license is issued and shall include a definition of supervision.

Section 20. **Codification instruction.** Section 19 is intended to be codified as an integral part of Title 37, chapter 8, and the provisions of Title 37, chapter 8, apply to section 19.

Section 21. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1981.

CHAPTER NO. 249

AN ACT TO PROVIDE FOR THE WAIVER OF TUITION FOR NONRESIDENT CHILDREN; AMENDING SECTIONS 20-5-303 AND 20-5-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-313, MCA, is amended to read:

"20-5-313. Individual tuition for high school pupil. (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees. *However, under this section, tuition shall be waived if the parent of the child paid the rate of tuition determined under the provisions of 20-5-312 in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school."*

Section 2. Section 20-5-303, MCA, is amended to read:

"20-5-303. Individual tuition for elementary pupil. No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. However, under this section, tuition shall be waived when the parent of the child paid *the rate of tuition*

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determined under the provisions of 20-5-305 in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school."

Approved April 2, 1981.

CHAPTER NO. 250

AN ACT TO REVISE AND CLARIFY THE TIMING OF RETIREMENT PAYMENTS TO POLICE OFFICERS AND FIREFIGHTERS BY THE STATE AUDITOR; AMENDING SECTIONS 19-9-702, 19-9-1007, 19-10-305, AND 19-11-512, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-702, MCA, is amended to read:

"19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually *after the end of each fiscal year but no later than September 1* from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor *by April 1 of each year* of the annual compensation paid to all active members during the preceding year, and the state's contribution shall be 14% of such compensation."

Section 2. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of minor children, whose parent, the

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spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments from the plan, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The *department of administration* shall compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be *reported to and* paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(5) to the administrator *after the end of each fiscal year, but* no later than *September 1.* This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 *after the end* of each *fiscal* year *but no later than September 1,* until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 3. Section 19-10-305, MCA, is amended to read:

"19-10-305. Annual state payments to municipality with police department. (1) *After* the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount

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computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-11-512.

(2) The payments provided for by 19-10-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(4) Payments provided for in 19-10-205 and subsection (1) of this section are in addition to those provided for in 19-10-301."

Section 4. Section 19-11-512, MCA, is amended to read:

"19-11-512. State auditor to pay association out of insurance premium taxes. (1) *After* the end of the fiscal year, the state auditor shall issue and deliver the payment described in this subsection to the board of investments to be credited to the account of each fire department relief association of any city or town of the first or second class which has a fire department relief association entitled by law to receive payments. The state auditor shall, at the same time, report to the treasurer of the association the amount of the payment. The payment shall be for the use and benefit of the association. It shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor and shall be equal to 10% of the total annual compensation paid by the city or town to its paid or part-paid firefighters for services in the previous calendar year. The city clerk of the city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by the city or town as compensation for services to paid or part-paid firefighters.

(2) When there is a disaster resulting in death or injury sufficient to draw the pensions of 10% of the active force and the fund, after receiving all moneys provided for in 19-11-501, 19-11-503, 19-11-504, and subsection (1) of this section, does not show at least the 1-mill growth referred to in 19-11-504, the treasurer of the association shall request and the state auditor shall issue and deliver an additional payment under the same conditions described in subsection (1). The payment shall be in an amount sufficient to cause at least the above-mentioned 1-mill growth in the fund.

(3) If a city is not entitled to receive a sum equal to 1 ½ mills of its total taxable value under subsections (1) and (2), the payment shall be made in the amount provided in subsections (4) and (5) for cities of the third class and in the manner described in subsection (1).

(4) *After* the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town, except cities and towns of the first or second class, which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be

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for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(6) The risks referred to in subsections (1) and (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Approved April 2, 1981.

CHAPTER NO. 251

AN ACT TO ABOLISH THE TEACHERS' RETIREMENT ANNUITY RESERVE FUND AND TO COMBINE THE FUNCTIONS OF THE ANNUITY RESERVE FUND WITH THOSE OF THE PENSION ACCUMULATION FUND; AMENDING SECTION 19-4-605, MCA; AND REPEALING SECTION 19-4-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-605, MCA, is amended to read:

"19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions *and annuities* shall be accumulated and from which pensions, *annuities,* and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 6.312% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the *amount* required to allow regular interest on the annuity savings fund shall be transferred *to that fund* from the pension accumulation fund.

(6) All pensions, *annuities,* and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount *necessary* to cover expenses of administration."

Section 2. **Repealer.** Section 19-4-604, MCA, is repealed.

Approved April 2, 1981.

CHAPTER NO. 252

AN ACT AMENDING SECTION 22-1-502, MCA, TO ALLOW THE STATE LAW LIBRARY OF THE STATE OF MONTANA TO OCCUPY QUARTERS IN BUILDINGS OTHER THAN THE STATE CAPITOL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-502, MCA, is amended to read:

"22-1-502. Location — control by board of trustees. The state law library of the state of Montana shall be located in Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees consisting of the chief justice and the justices of the supreme court of the state of Montana."

Approved April 2, 1981.

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CHAPTER NO. 253

AN ACT DELETING THE REQUIREMENT THAT A DECREE OF WATER RIGHT BE CERTIFIED TO EVOKE AN EXCEPTION TO THE FILING FEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTION 85-2-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee. Each claim filed under 85-2-221 shall be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(1) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(2) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a copy of that decree or pertinent portion thereof."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 254

AN ACT AMENDING SECTIONS 19-3-801 AND 19-3-805, MCA, TO INCLUDE THE AMOUNT PAID BY THE EMPLOYER FOR ADMINISTRATIVE EXPENSES FOR THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM IN THE EMPLOYER CONTRIBUTION RATE AND TO PROVIDE AN EARLIER DATE FOR PAYMENT OF MEMBERSHIP FEES; REPEALING SECTION 19-3-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-801, MCA, is amended to read:

"19-3-801. Employer contribution rates — actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be *6.2%* from July 1, *1981*, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then

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present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons."

Section 2. Section 19-3-805, MCA, is amended to read:

"19-3-805. Administrative expenses. (1) *The expense of administering this chapter, exclusive of the payments of retirement allowances and other benefits, may be paid from the fund.*

(2) In addition to the contributions elsewhere provided in this chapter, on *January* 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. These fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter."

Section 3. **Coordination section.** If both this act and HB 45, introduced in the 47th legislature, are passed and approved, the percentage amount contained in 19-3-801 shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act.

Section 4. **Repealer.** Section 19-3-303, MCA, is repealed.

Section 5. **Effective date.** This act is effective July 1, 1981.

Approved April 3, 1981.

CHAPTER NO. 255

AN ACT TO CHANGE THE POPULATION PREREQUISITE FOR MUNICIPAL INCORPORATION; AMENDING SECTIONS 7-2-4101 AND 7-2-4103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4101, MCA, is amended to read:

"7-2-4101. Petition to organize municipalities. (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

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(2) (a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain *50* or more registered electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the election administrator."

Section 2. Section 7-2-4103, MCA, is amended to read:

"7-2-4103. Prerequisites to organization of municipality. No municipal corporation may be formed unless:

(1) *(a)* the number of inhabitants is 300 or upwards; *or*

(b) the community was a townsite owned and built by the U.S. government prior to [the effective date of this act]; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 256

AN ACT REQUIRING NOTIFICATION OF NONPROFIT CORPORATIONS OF EXPIRATION OF THEIR CORPORATE EXISTENCE; PROVIDING FOR THE REINSTATEMENT OF EXPIRED NONPROFIT CORPORATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Secretary of state to notify corporation of expiration of existence.** The secretary of state shall notify every corporation, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Section 2. **Reinstatement of corporation whose term has expired.** (1) The secretary of state may:

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(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed and verified by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration.

Section 3. **Relation back of corporate rights restored.** Any restoration of corporate rights pursuant to [section 2] relates back to the date the corporation expired, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

Section 4. **Acquisition of new name by corporation upon reinstatement.** In all cases where a corporation's term has expired and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement, such expired corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from those

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of all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

Section 5. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 35, chapter 2, part 11, and the provisions of Title 35, chapter 2, apply to section 1.

(2) Sections 2 through 4 are intended to be codified as an integral part of Title 35, chapter 2, and the provisions of Title 35, chapter 2, apply to sections 2 through 4.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 257

AN ACT CHANGING THE TIME WHEN INTEREST IS DRAWN ON AN AWARD IN A CONDEMNATION PROCEEDING FROM THE TIME POSSESSION IS SURRENDERED TO THE TIME WHEN THE SUMMONS IS SERVED; AMENDING SECTION 70-30-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date *of the service of the summons* to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date

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it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

(4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.

(5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

Section 2. **Applicability.** This act applies to all summons served after the effective date of this act.

Approved April 3, 1981.

CHAPTER NO. 258

AN ACT TO INCLUDE DENTISTS IN THE FREEDOM OF CHOICE REQUIREMENT FOR DISABILITY INSURANCE POLICIES REGARDING SELECTION OF HEALTH CARE PRACTITIONERS; AMENDING SECTION 33-22-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, *dentist,* osteopath, chiropractor, optometrist, chiropodist, or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Approved April 3, 1981.

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CHAPTER NO. 259

AN ACT TO PRECLUDE CRIMINAL OR CIVIL LIABILITY OF PERSONS DONATING FOOD, APPARENTLY FIT FOR HUMAN CONSUMPTION, FOR FREE DISTRIBUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Immunity of persons donating food for free distribution.** (1) As used in this section, the following definitions apply:

(a) "Donor" means any processor, distributor, wholesaler, or retailer of perishable or canned foods or farmer or individual who donates food for free distribution.

(b) "Gleaner" means a person who harvests for free distribution perishable food that has been donated by the owner.

(c) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. Perishable food includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruit and vegetables, grains, and foods that have been refrigerated or frozen.

(d) "Canned food" means any food that has been commercially processed and prepared for human consumption.

(2) Notwithstanding any other provision of law:

(a) a good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution or a gleaner of perishable food, apparently fit for human consumption, for free distribution is not subject to any criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by gross negligence or intentional misconduct of the donor or gleaner.

(b) a bona fide charitable or nonprofit organization that in good faith receives food, apparently fit for human consumption, and distributes it at no charge is not subject to any criminal penalty or civil damages resulting from the condition of the food unless an injury is caused by gross negligence or intentional misconduct of the organization.

(3) Immunity under this section extends to the good faith donation of canned or perishable foods that, while apparently fit for human consumption, are not readily marketable due to appearance, grade, surplus, or other considerations, as well as to those foods that are readily marketable.

(4) If the ultimate distributor charges any fee for the food received from a donor or gleaner, such fact shall not deprive the donor or gleaner of the immunity provided under this section.

(5) This section does not restrict the authority of any lawful agency to inspect, regulate, or ban the use of donated food for human consumption.

Approved April 3, 1981.

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CHAPTER NO. 260

AN ACT TO ALLOW SERVICE PERFORMED FOR THE UNITED STATES GOVERNMENT PURSUANT TO TITLE IV, THE INTERGOVERNMENTAL PERSONNEL ACT OF 1970, TO BE CREDITED IN THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Service in the United States government.** (1) A state game warden who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify such federal service in the game wardens' retirement system under subsection (2) of this section, provided that:

(a) the warden has accumulated at least 5 years of service in the game wardens' retirement system; and

(b) the warden returns to full-time service covered by the game wardens' retirement system for at least 1 year after completing service in the United States government.

(2) A state game warden who is assigned to an agency of the United States government has the option to:

(a) continue his payments into the account; or

(b) qualify this service by paying an amount equal to the normal employer and employee contributions plus interest within 2 years after his return to active state game warden status.

(3) Salary earned while on assignment to an agency of the United States government must be considered salary for purposes of the game wardens' retirement system and may be included in the determination of final salary as defined in 19-8-101, provided that the final salary cannot exceed 100% of the warden's highest annual salary earned as a state game warden.

Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 19, chapter 8, part 3, and the provisions of Title 19, chapter 8, apply to section 1.

Approved April 3, 1981.

CHAPTER NO. 261

AN ACT TO ALLOW SERVICE PERFORMED FOR THE UNITED STATES GOVERNMENT PURSUANT TO TITLE IV, THE INTERGOVERNMENTAL PERSONNEL ACT OF 1970, TO BE CREDITED IN THE MONTANA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Service in the United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, The Intergovernmental Personnel Act of 1970, may qualify such

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federal service as creditable service in the public employees' retirement system under subsection (2) of this section, provided that:

(a) the member has accrued 5 years or more of service in the public employees' retirement system; and

(b) the member returns to full-time employment with the prior state or local government employer for at least 1 year after completing service in the United States government.

(2) A member of the public employees' retirement system who is assigned to an agency of the United States government has the option to:

(a) continue his payments into the account; or

(b) qualify this service under 19-3-505 within 2 years after his return to active status as a state or local government employee.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the public employees' retirement system and may be included in the determination of final compensation as defined in 19-3-104, provided that the final compensation cannot exceed 100% of the member's highest annual compensation earned as a state or local government employee.

Section 2. **Codification instruction.** Section 1 is intended to be an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, apply to section 1.

Approved April 3, 1981.

CHAPTER NO. 262

AN ACT TO USE MARKET VALUE AS OF JANUARY 1 OF THE ASSESSMENT YEAR IN ASSESSING MOTOR VEHICLES SUBJECT TO STAGGERED REGISTRATION; AMENDING SECTIONS 15-8-202 AND 61-3-503, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment. (1) (a) The department or its agent must, in each year, ascertain and assess all motor vehicles other than motor homes, travel trailers, or mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. *The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide.* The motor vehicles shall be assessed in each year to the persons by whom owned or claimed

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or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(b) No tax may be assessed against motor vehicles that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(d) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(2) In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner."

Section 2. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) *Except as provided in subsection (3), a* person who files an application for registration or reregistration of a motor vehicle, other than a motor home, travel trailer, or a mobile home as defined in 15-1-101(1), shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle *as of January 1 of* the year for which the application for registration is made.

(2) Except as provided in subsection (3), motor vehicles, other than motor homes, travel trailers, or mobile homes as defined in 15-1-101(1), are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(3) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, *using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide;* and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid."

Section 3. **Applicability.** This act applies to the assessment of motor vehicles on or after January 1, 1981.

Approved April 3, 1981.

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CHAPTER NO. 263

AN ACT TO MAKE HOUSETRAILERS AND MOBILE HOMES ELIGIBLE FOR PROPERTY TAX RELIEF WHEN DESTROYED BY NATURAL DISASTER; AMENDING SECTION 15-16-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-611, MCA, is amended to read:

"15-16-611. Reduction of property tax for property destroyed by natural disaster. (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property *or a trailer or mobile home as described in 15-6-134(1)(c)* have been destroyed to such an extent that such improvements have been rendered unsuitable for their previous use by natural disaster, adjust the tax due and payable for the current year on the property under 15-16-102 as provided in subsection (2) of this section.

(2) To determine the amount of tax due for destroyed property, the county treasurer shall multiply the amount of tax levied and assessed on the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365.

(3) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(4) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind."

Approved April 3, 1981.

CHAPTER NO. 264

AN ACT TO REVISE AND CLARIFY THE SOCIAL SECURITY PROVISIONS RELATING TO SEPARATE STATE RETIREMENT SYSTEMS, REFERENDUM BY THE GOVERNOR, MANAGEMENT OF THE SOCIAL SECURITY ACCOUNT, AND COLLECTION OF DELINQUENT PAYMENTS; AMENDING SECTIONS 19-1-104, 19-1-301, 19-1-602, AND 19-1-706, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-1-104, MCA, is amended to read:

"19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

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(2) Pursuant to section 218(p)(1) of the Social Security Act, *the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system,* the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby."

Section 2. Section 19-1-301, MCA, is amended to read:

"19-1-301. Authorization of referendum by governor. With respect to *members of the public employees', highway patrolmen's, judges', and game wardens' retirement systems,* the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision."

Section 3. Section 19-1-602, MCA, is amended to read:

"19-1-602. Management of account. (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the funds of the state agency, to be used by it to defray the costs of administering the state agency as it may determine."

Section 4. Section 19-1-706, MCA, is amended to read:

"19-1-706. Collection of delinquent payments from political subdivision. *(1) The purpose of this section is to encourage compliance with the federal deposit and reporting procedures, not to produce revenue. Therefore, the state agency may waive part or all of the interest penalty when, in the opinion of the board, a reasonable explanation has been submitted in writing by the political subdivision.*

(2) Delinquent payments due under 19-1-704 may, with interest at the rate of *9%* a year, *or $10 per day, whichever is greater,* be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department, agency, or fund of the state."

Approved April 3, 1981.

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CHAPTER NO. 265

AN ACT TO EXTEND FOR A 2-YEAR PERIOD THE 3-YEAR EXEMPTION FROM THE SEVERANCE TAX ON OIL AND GAS FOR NATURAL GAS PRODUCED FROM A WELL 5,000 FEET DEEP OR DEEPER; AMENDING SECTION 15-36-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-121, MCA, is amended to read:

"15-36-121. Exemption from severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state and to lessen Montana's dependence on imported natural gas.

(2) Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, *1982*, is exempt from all of the severance tax imposed by 15-36-101 for 3 years if the gas produced from the well is:

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well; and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana or at least 10,000 natural gas consumers within Montana.

(3) The 3-year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(4) Notwithstanding the provisions of subsection (2), all reporting requirements under the severance tax remain in effect."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 266

AN ACT AUTHORIZING UTILITY LOANS FOR INSTALLATION OF RECOGNIZED NONFOSSIL FORMS OF ENERGY GENERATION SYSTEMS IN A DWELLING ON THE SAME BASIS AS UTILITY LOANS FOR INSTALLATION OF ENERGY CONSERVATION SYSTEMS IN A DWELLING; RAISING THE TAX CREDIT CEILING ON SUCH LOANS BY UTILITIES AND FINANCIAL INSTITUTIONS; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND AMENDING SECTION 15-32-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-107, MCA, is amended to read:

"15-32-107. Loans by utilities and financial institutions — tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation

systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials *and* recognized nonfossil forms of energy generation systems.

(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) A public utility or a financial institution lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(4) A utility may not claim a tax credit under this section exceeding *$500,000* in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(5) The public service commission may make rules to implement this section as it shall apply to public utilities only."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 267

AN ACT TO REALLOCATE THE CIGARETTE TAX AND TO DELETE REFERENCES IN THE CIGARETTE TAX LAW TO BONDS THAT HAVE BEEN RETIRED; AMENDING SECTIONS 16-11-111, 16-11-114, 16-11-119, AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. From and after *July 1, 1981,* there is hereby levied, imposed, and assessed and there shall be collected

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and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery thereof: *12* cents on each package containing not more than 20 cigarettes and, when packages contain more than 20 cigarettes, then *12* cents on each 20 or fraction of 20 cigarettes contained in such package."

Section 2. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less *3%* of the face value upon payment therefor as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana."

Section 3. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes — retirement of bonds. All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: *73%* in the long-range building program account in the sinking fund, and *27%* in the long-range building program account in the bond proceeds and insurance clearance fund."

Section 4. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the sinking fund account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the sinking fund account *73%* of all money received from the collection of the *12*-cent excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 5. **Effective date.** This act is effective on July 1, 1981.

Approved April 3, 1981.

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CHAPTER NO. 268

AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2, MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT; ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR THE SUSPENSION OF LEGAL PROCEEDINGS AND THE FILING OF FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Supervision and administration by supreme court.** (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

Section 2. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters — removal. (1) The water judge in each water division shall appoint *at least one* water master *and may appoint more than one water master.*

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge."

Section 3. Section 85-2-112, MCA, is amended to read:

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"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, *subject to the powers and duties of the supreme court under [section 1]*;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department or claims of existing rights with a district court under this chapter."

Section 4. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. *While* negotiations for the conclusion of a compact under part 7 are being pursued, all *proceedings* to generally adjudicate reserved Indian water rights *and federal reserved water rights of those tribes and federal agencies which are negotiating* are suspended. *The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1985, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1985, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.*"

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee. *(1)* Each claim filed under 85-2-221 *or 85-2-222 must* be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

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(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40."

Section 6. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) *The* water judge shall issue a preliminary decree. The preliminary decree shall be based on*:*

(a) the statements of claim before the water judge*;*

(b) the data submitted by the department*;*

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge. *The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree if such a decree is necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.*

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been *approved by the legislature and the tribe or federal agency* whether or not it has been ratified by congress.

(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and *(3)*, and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 7. Section 85-2-233, MCA, is amended to read:

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"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional *90* days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e)."

Section 8. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States.

(3) Upon its approval by the Montana legislature and the tribe or federal agency, the terms of a compact must be included in the preliminary decree as provided by 85-2-231. However, if approval of the state legislature and tribe or federal agency has not been accomplished by July

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1, 1985, all federal and Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 60 days. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 9. Section 85-2-704, MCA, is amended to read:

"**85-2-704. Termination of negotiations.** The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. *The tribe or federal agency shall file all of its claims for reserved rights within 60 days of the termination of negotiations.*"

Section 10. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of section 1 apply to Title 3, chapter 7.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 269

AN ACT TO REVISE THE PROVISIONS RELATING TO CITY JUDGES FOR TOWNS; REQUIRING THE APPOINTMENT OR DESIGNATION OF A CITY JUDGE AS A TOWN OFFICIAL; REVISING CERTAIN QUALIFICATIONS FOR MUNICIPAL OFFICE; DEFINING THE TERM OF OFFICE FOR A JUSTICE OF THE PEACE DESIGNATED BY A TOWN TO ACT AS CITY JUDGE; AND PERMITTING A JUSTICE OF THE PEACE SO DESIGNATED TO ACT AS CITY JUDGE IN ALL CASES ARISING OUT OF VIOLATIONS OF ORDINANCES IN WHICH THE TOWN IS PARTY; AMENDING SECTIONS 3-11-201, 3-11-205, 7-4-4103, AND 7-4-4104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4103, MCA, is amended to read:

"**7-4-4103. Officers of towns.** (1) The officers of a town consist of:

(a) one mayor;

(b) two aldermen from each ward; *and*

(c) one city judge.

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(2) The officers listed in subsection (1), *except for the city judge,* must be elected by the qualified electors of the town, as hereinafter provided.

(3) The governing body of the town shall appoint a city judge or may designate a justice of the peace to act as city judge as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title."

Section 2. Section 7-4-4104, MCA, is amended to read:

"7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

(1) who is not a citizen of the United States; and

(2) who has not *met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town."*

Section 3. Section 3-11-201, MCA, is amended to read:

"3-11-201. Term of office. *(1) An elected* city judge shall hold office for a term of 4 years and until the qualification of his successor.

(2) A justice of the peace designated to act as city judge for a town under 3-11-205 shall serve as city judge for the duration of his term as justice of the peace unless the council terminates the designation."

Section 4. Section 3-11-205, MCA, is amended to read:

"3-11-205. Justice of the peace acting as city judge. In a town, the council may designate a justice of the peace of the county in which the town is situated to act as city judge and may by ordinance fix the compensation for his services. The justice of the peace so designated *who agrees to act in that capacity shall* act as city judge in all cases arising out of violations of ordinances in which the town is a party. If the justice of the peace must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town in which the court is held."

Approved April 3, 1981.

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CHAPTER NO. 270

AN ACT PERMITTING FIRE DEPARTMENT RELIEF ASSOCIATIONS OF PURE VOLUNTEER FIRE DEPARTMENTS IN FIRST- AND SECOND-CLASS CITIES TO BE MANAGED UNDER THE SAME PROVISIONS AS RELIEF ASSOCIATIONS IN THIRD-CLASS CITIES AND TOWNS; AMENDING SECTIONS 19-11-301 AND 19-11-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-11-301, MCA, is amended to read:

"19-11-301. Management of association. The management of the fire department relief associations in first- and second-class cities, *except fire department relief associations of pure volunteer fire departments,* is vested in the boards of trustees of the associations subject to the provisions of 19-11-302 and 19-11-303."

Section 2. Section 19-11-401, MCA, is amended to read:

"19-11-401. Management of association. The management of the fire department relief associations in municipalities other than first- and second-class cities *and of fire department relief associations of pure volunteer fire departments in first- and second-class cities* is vested in the boards of trustees, except as provided in 19-11-402 and 19-11-403."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1981.

CHAPTER NO. 271

AN ACT TO PROVIDE FOR THE LICENSING OF COMMUNITY GROUP HOMES FOR THE DEVELOPMENTALLY DISABLED AND TO ALLOW FOR THE ADOPTION OF RULES RELATING TO THAT LICENSING; AMENDING SECTIONS 53-20-305 AND 53-20-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-305, MCA, is amended to read:

"53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards. *Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.*

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(1) A community home for the developmentally disabled shall be licensed annually by the department of social and rehabilitation services.

(2) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendation to the department of social and rehabilitation services concerning the standards for health and safety."

Section 2. Section 53-20-307, MCA, is amended to read:

"53-20-307. Health and safety standards for licensing. *(1) (a) After initial certification by the state fire marshal, community homes must be certified annually for fire and life safety by the state fire marshal.*

(b) The state fire marshal shall notify the department of social and rehabilitation services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification."

Approved April 6, 1981.

CHAPTER NO. 272

AN ACT AUTHORIZING THE STATE TREASURER TO ESTABLISH A LENDING PROGRAM FOR STATE SECURITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Securities lending program.** The state treasurer may, subject to the approval of the state board of investments, establish a securities lending program for all securities held in custody under 17-1-111. All loaned securities must be secured by equivalent securities of the same class in an amount equal to at least 100% of the market value of the loaned securities as determined by the board. All fees and proceeds earned by the

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securities lending program must be deposited pro rata in the funds that loaned the securities.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 6, 1981.

CHAPTER NO. 273

AN ACT REQUIRING CERTIFICATION BY THE COUNTY TREASURER THAT THERE ARE NO DELINQUENT TAXES OUTSTANDING ON PROPERTY PROPOSED TO BE SUBDIVIDED; AMENDING SECTION 76-3-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-611, MCA, is amended to read:

"76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; *and*

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest."

Approved April 6, 1981.

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CHAPTER NO. 274

AN ACT TO MERGE THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING AND CERTAIN FUNCTIONS OF THE DEPARTMENT OF COMMUNITY AFFAIRS WITH THE DEPARTMENT OF BUSINESS REGULATION AND TO RENAME THAT DEPARTMENT THE DEPARTMENT OF COMMERCE; TO ALLOCATE CERTAIN FUNCTIONS OF THE DEPARTMENT OF COMMUNITY AFFAIRS TO OTHER DEPARTMENTS OF STATE GOVERNMENT; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE MERGER; TO ABOLISH OTHER FUNCTIONS OF THE DEPARTMENT OF COMMUNITY AFFAIRS, INCLUDING THE STATE AIRCRAFT POOL; TO PROVIDE FOR A STATE INFORMATION AND RESEARCH SYSTEM; REPEALING SECTIONS 2-15-1101, 2-15-1601, AND 67-2-201 THROUGH 67-2-205, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of *commerce*;

(g) department of justice;

(h) department of health and environmental sciences;

(i) department of social and rehabilitation services;

(j) department of institutions;

(k) department of highways;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) department of state lands;

(p) department of natural resources and conservation;

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(q) department of fish, wildlife, and parks.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

Section 2. **Department of business regulation renamed department of commerce.** The department of business regulation is renamed the department of commerce. The functions of the department of business regulation are retained by the department of commerce. Unless inconsistent with this act, any reference in the MCA, including laws passed by the 47th legislature, to the "department of business regulation" or "department" or "director" (of business regulation) is changed to the "department of commerce" or "department" or "director" (of commerce).

Section 3. **Department of professional and occupational licensing abolished — functions transferred to department of commerce.** The department of professional and occupational licensing is abolished and its functions are transferred to the department of commerce. Unless inconsistent with this act, any reference in the MCA, including laws passed by the 47th legislature, to the "department of professional and occupational licensing" or "department" or "director" (of professional and occupational licensing) is changed to the "department of commerce" or "department" or "director" (of commerce).

Section 4. **Professional and occupational licensing boards — reallocation.** All boards allocated to the department of professional and occupational licensing under Title 2, chapter 15, part 16, are reallocated to the department of commerce under Title 2, chapter 15, part 18. The code commissioner shall recodify those sections as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, apply to those sections. The code commissioner shall change internal name and section number references accordingly.

Section 5. **Definition.** As used in this part, "board" means each board [reallocated by section 4].

Section 6. **Department of community affairs abolished — certain functions transferred to department of commerce.** (1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce:

(a) allocation of state funds for public transportation in 7-14-102;

(b) acting as state administering agency for the Montana Economic Land Development Act under Title 15, chapter 24, part 13;

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(c) relating to aviation and contained in 15-70-204, 15-70-221, Title 67, and 80-8-204;

(d) assisting development credit corporations, contained in 32-4-201;

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501;

(f) prescribing standards for monumentation under 76-3-403;

(g) establishing minimum subdivision review rules under 76-3-502 and 76-4-129;

(h) planning and developing the state economy, contained in Title 90, chapter 1, part 1;

(i) furnishing advice concerning secondary industry development under 90-5-113; and

(j) furnishing facilities and information to the coal board under 90-6-204 and 90-6-207.

(3) Unless inconsistent with this act, any reference to the "department of community affairs" or "department" (of community affairs) in the sections listed in subsection (2) and in 2-8-103 are changed to "department of commerce" or "department" (of commerce).

(4) The divisions of the department of community affairs are abolished. Any reference in the sections listed in subsection (2) to a division in the department of community affairs is changed to "department" (of commerce).

(5) The governor may by executive order assign to a department in a manner consistent with this act functions allocated to the department of community affairs by the 47th legislature and not transferred by this act.

Section 7. **Functions of department of community affairs transferred to department of administration.** (1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in Title 2, chapter 7, part 5; 2-9-702; 2-9-802; 7-1-4121; 7-1-4130; 7-1-4145; 7-1-4147; 7-1-4148; Title 7, chapter 2, part 49; 7-3-146; 7-3-153; 7-4-2634; 7-5-2132; 7-5-4124; 7-6-207; 7-6-209; 7-6-210; 7-6-2114; 7-6-2203; 7-6-2212; 7-6-2302; 7-6-2311; 7-6-2314; 7-6-2315; 7-6-2322; 7-6-4111; 7-6-4113; 7-6-4205; 7-6-4221; 7-6-4225; 7-6-4233; 7-7-123; 17-6-103; 19-11-206; 19-11-303; 19-11-403; 20-1-212; 20-9-203; 20-9-344; 20-9-504; 61-2-208; 85-7-1616; 85-7-1913; 85-7-2027; and 85-9-611 and disposing of oil and gas severance taxes in 15-36-112 are transferred to the department of administration.

(2) Unless inconsistent with this act, any reference to "department of community affairs" in the sections listed in subsection (1) or to "municipal audit division" or "department" (of community affairs) in those sections or related reference to "department" (of community affairs) in related sections is changed to "department of administration".

Section 8. **Functions transferred to department of justice.** (1) The functions of the department of community affairs of administering the

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highway traffic safety program under 61-2-102 and 61-2-103 and of assisting in delivery of emergency medical services under 50-6-104 and 50-6-203 are transferred to the department of justice.

(2) The program is attached for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) Unless inconsistent with this act, any reference to the "department of community affairs" or divisions of that department in the sections in subsection (1) is changed to the "department of justice".

Section 9. **Functions transferred to department of social and rehabilitation services.** (1) The functions of the department of community affairs of allocating weatherization money under 90-4-201 and 90-4-202 are transferred to the department of social and rehabilitation services.

(2) Unless inconsistent with this act, any reference to the "department of community affairs" in the sections in subsection (1) is changed to the "department of social and rehabilitation services".

Section 10. **Functions of department of community affairs eliminated.** (1) The functions of the department of community affairs as a member of the human services agency team in 53-10-101 are eliminated.

(2) Unless inconsistent with this act, any reference to the "department of community affairs" and any words dependent on such reference for meaning in those sections in subsection (1) are deleted.

Section 11. **Board of housing — reallocated to department of commerce.** (1) The board of housing created in 2-15-1008 and allocated to the department of administration is reallocated to the department of commerce. The code commissioner shall recodify that section in Title 2, chapter 15, part 18, and change internal name and section number references accordingly.

(2) The functions of the department of administration relating to assisting in the financing of housing under Title 90, chapter 6, part 1, are transferred to the department of commerce. Unless inconsistent with this act, any reference in that part to the "department of administration" or "department" (of administration) is changed to "department of commerce" or "department" (of commerce).

Section 12. **Boards reallocated to department of commerce.** The board of county printing, the board of aeronautics, the coal board, and the office of state coordinator of Indian affairs, allocated to the department of community affairs under 2-15-1102 through 2-15-1104 and 2-15-1111, are reallocated to the department of commerce. The code commissioner shall recodify those sections in Title 2, chapter 15, part 18, and change internal name and section number references accordingly.

Section 13. **State information and research system.** The department of administration shall, in cooperation with other state agencies and local governments, establish and maintain a central depository of statistical, graphic, library, and other information, including computer-retrievable

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files, concerning the significant characteristics of the state, its people, economy, land, and physical characteristics. The department shall analyze and disseminate such information to state and local agencies and the general public.

Section 14. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board — composition — allocation. (1) There is a state banking board.

(2) The board is composed of seven members, including the director of *commerce, or his designee,* who is the chairman of the board. The remaining six members of the board shall be appointed with consideration given banks of small, medium, and large size and to geographical distribution. At least one banker member and one public member shall be appointed from each congressional district of the state. Two of the six members shall be active officers in state banks of Montana, one shall be an active officer of a national bank doing business in Montana, and three shall be members of the public, none of whom shall be an officer, director, or shareholder of any state or national bank.

(3) The members shall be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of *commerce* may serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 15. Section 37-60-101, MCA, is amended to read:

"37-60-101. General definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of *commerce.*

(2) "Director" means the director of the department of *commerce or his designee.*

(3) "Licensee" means a person licensed under this chapter and includes but is not limited to private investigator and private patrol operator.

(4) "Manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

(5) "Person" includes any individual, firm, company, association, organization, partnership, and corporation."

Section 16. Section 60-11-101, MCA, is amended to read:

"60-11-101. Rail planning. The department *of commerce* may administer rail planning activities."

Section 17. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. (1) Not later than December 31, 1973, the department of *commerce* shall, in conformance with the Montana Administrative Procedure Act,

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prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this chapter.

(2) The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this chapter. In prescribing the minimum contents of the subdivision regulations, the department of *commerce* shall require the submission by the subdivider to the governing body of an environmental assessment.

(3) The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision. Such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body."

Section 18. **Reorganization procedure.** The provisions of sections 2-15-131 through 2-15-137 govern the merger of the department of community affairs, the department of professional and occupational licensing, and the department of business regulation into the department of commerce and the transfer of the various functions contained in this act.

Section 19. **Implementation.** The governor shall by executive order implement the provisions of this act.

Section 20. **Codification instruction.** (1) Section 5 is intended to be codified as an integral part of Title 37, chapter 1, part 1, and section 5 applies to that part.

(2) The code commissioner shall recodify 2-15-1112 and 2-15-1113 as an integral part of Title 90.

Section 21. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Repealer.** Sections 2-15-1101, 2-15-1601, and 67-2-201 through 67-2-205, MCA, are repealed.

Section 23. **Effective date.** (1) Section 19 is effective on passage and approval of this act.

(2) Sections 1 through 18 and sections 20 through 23 are effective upon signing of the executive order under section 19 or on July 1, 1981, whichever occurs earlier.

Approved April 6, 1981.

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CHAPTER NO. 275

AN ACT TO EXEMPT REGULATED LENDERS FROM LIMITATIONS ON THE RATE OF INTEREST WHICH REGULATED LENDERS MAY CHARGE AND TO EXEMPT REGULATED LENDERS FROM ALL USURY STATUTES; AMENDING SECTIONS 31-1-106, 31-1-107, 32-2-402, AND 32-3-601, MCA; SUSPENDING THE OPERATION OF SECTION 32-1-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition.** The term "regulated lenders" as used in [section 2] means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.

Section 2. **Exemption.** A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

Section 3. Section 31-1-106, MCA, is amended to read:

"31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code *or [sections 1 and 2]*, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 6% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

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Section 4. Section 31-1-107, MCA, is amended to read:

"31-1-107. Interest rate allowed by agreement. (1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement.

(4) The provisions of this section do not apply to regulated lenders as defined in [section 1]."

Section 5. Section 32-2-402, MCA, is amended to read:

"32-2-402. Limit on interest and penalties. (1) Interest not exceeding the lawful contract rate may be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate percent of the dividend declared on the same unpaid stock payments.

(2) An association may not charge or collect from a stockholder, member, or borrower any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed $5 may be charged for payments more than 15 days late.

(3) An officer, agent, or employee of an association collecting or attempting to collect a penalty, fine, or premium of any kind, except the late payment penalty, or interest at a rate higher than provided in the note or other evidence of debt or in this chapter is guilty of a misdemeanor."

Section 6. Section 32-3-601, MCA, is amended to read:

"32-3-601. Loans — purposes, terms, and interest rate. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves."

Section 7. **Suspension.** The operation of section 32-1-436, MCA, is suspended from the effective date of this act until July 1, 1983.

Section 8. **Effective date — termination.** This act is effective on passage and approval and terminates on July 1, 1983.

Approved April 6, 1981.

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CHAPTER NO. 276

AN ACT TO ELIMINATE USURY LIMITS UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT; AMENDING SECTIONS 31-1-241 AND 31-1-243, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-241, MCA, is amended to read:

"31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall *be at a rate agreed upon by the retail seller and the buyer.*

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer. The finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle.

(a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full."

Section 2. Section 31-1-241, MCA, is amended to read:

"31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1—any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, $7 per $100 per year;

(ii) class 2—any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, $9 per $100 per year;

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(iii) class 3—any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, $11 per $100 per year;

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over $5,000, $9 per $100 per year. This subsection shall not apply to agricultural equipment.

(c) as to any manufactured structure or recreational vehicle, $9 per $100 per year;

(d) as to services and goods other than as provided under subsections (1)(a), (1)(b), and (1)(c) above:

(i) on so much of the principal balance as does not exceed $300, $11 per $100 per year;

(ii) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(iii) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 31-1-231(5) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of $20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1 ½% for each such monthly period to an amount (not including any unpaid finance charge) *by using* the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle.

(a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, within the permitted ceiling amount, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

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(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

Section 3. Section 31-1-243, MCA, is amended to read:

"31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made."

Section 4. **Merchant finance.** A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.

Section 5. **Effective date — termination.** (1) This act, except as provided in subsection (2), is effective on passage and approval and terminates on July 1, 1983.

(2) Section 2 is effective July 1, 1983.

Approved April 6, 1981.

CHAPTER NO. 277

AN ACT TO DELETE REFERENCE TO THE COUNTY WELFARE DEPARTMENT AS A POTENTIAL INVESTIGATOR FOR THE PURPOSES OF INVESTIGATING FAMILIES IN DISSOLUTION CUSTODY DISPUTES AND PROVIDING FOR THE AWARDING OF THE COST OF INVESTIGATION IN THE FINAL ORDER OF DISSOLUTION; AMENDING SECTION 40-4-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The *cost of the* investigation and report *shall be paid according to the final order.*

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing."

Approved April 6, 1981.

CHAPTER NO. 278

AN ACT TO CLARIFY THE STATE FIRE MARSHAL'S AUTHORITY CONCERNING THE ALTERATION, REPAIR, OR DEMOLITION OF BUILDINGS DECLARED TO BE A PUBLIC NUISANCE; AMENDING SECTION 50-62-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-62-107, MCA, is amended to read:

"50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the state fire marshal or any other officer authorized in 50-62-101 *may* proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the state fire marshal or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. This person shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof,

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the expense incurred by him, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit."

Approved April 6, 1981.

CHAPTER NO. 279

AN ACT TO GENERALLY REVISE AND CLARIFY PART 2 OF THE SECURITIES ACT OF MONTANA RELATING TO REGISTRATION OF DEALERS AND SECURITIES; AMENDING SECTIONS 30-10-201 THROUGH 30-10-206 AND 30-10-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

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(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) *When the registration requirements are complied with, the commissioner shall approve the registration.*

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until *December 31* following such registration *or such other time as the commissioner may by rule adopt* and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a

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registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, *or investment adviser* or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the

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commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 30-10-202, MCA, is amended to read:

"30-10-202. Registration of securities. It is unlawful for any person to offer *or* sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter."

Section 3. Section 30-10-203, MCA, is amended to read:

"30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally

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accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

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(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208; *and*

(l) such other information as the commissioner may require.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at *noon* the *10th* business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines."

Section 4. Section 30-10-204, MCA, is amended to read:

"30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a

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copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; *and*

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 *business* days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become

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effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 5. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the

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offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; *and*

(p) such other information as the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder."

Section 6. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

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(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective *for a period of 1 year unless it is* revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, *or renewed under 30-10-209(1)(b)*; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) During the period *in which there is an* offering of securities registered under the provisions of parts 1 through 3 of this chapter, *and for which there is no exemption under 30-10-104 or 30-10-105,* financial data *for* the issuer's fiscal year *and such other statements as the commissioner may require* shall be filed with the commissioner annually, not less than 90 days after the end of each such year. If such statements are not certified, the commissioner may verify them by examining the issuer's books and records."

Section 7. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) Any issuer or broker-dealer who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization*; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration.* No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

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(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter."

Section 8. **Coordination instruction.** If House Bill No. 380 as introduced in the 47th Legislature is not passed and approved, the reference in 30-10-206(3) to 30-10-209(1)(b) (as amended in section 6 of this act) shall be changed to 30-10-209(2).

Approved April 6, 1981.

CHAPTER NO. 280

AN ACT TO GENERALLY REVISE AND CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND 30-10-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-301, MCA, is amended to read:

"30-10-301. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, *in, into, or from this state,* to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to:

(a) employ any device, scheme, or artifice to defraud the other person; or

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(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

Section 2. Section 30-10-307, MCA, is amended to read:

"30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at *10%* per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at *10%* per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

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(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at *10%* per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at *10%* per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

Approved April 6, 1981.

CHAPTER NO. 281

AN ACT TO REVISE AND ADD FEES CHARGED UNDER THE SECURITIES ACT OF MONTANA; AMENDING SECTION 30-10-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) *(a)* For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of *$200* for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus *1/10* of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration *of* securities *may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of* an additional registration fee to be computed at *1/10* of 1% of the aggregate offering price of such securities

which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than *$200* or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee of $50. The late renewal fee may be waived by the commissioner upon a showing of good cause.

(d) For filing an annual statement, *a posteffective amendment to a registration of securities, or a name change,* the fee shall be $10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman, the fee shall be *$50* for original registration with each employer and *$50* for each annual renewal.

(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be $10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption, the fee shall be *$50.*"

Approved April 6, 1981.

CHAPTER NO. 282

AN ACT TO EXTEND AND AMEND THE BOND VALIDATING ACT; AMENDING SECTIONS 17-5-202 AND 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-202, MCA, is amended to read:

"17-5-202. Definitions. The following terms, wherever used or referred to in this part, have the following meanings:

(1) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other

political or governmental subdivision of the state *or any commission, authority, or agency of a political or governmental subdivision,* and also includes the board of public education, the board of regents of higher education, the board of examiners, the board of natural resources and conservation, the state highway commission, or any other governmental agency of this state.

(2) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund."

Section 2. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 6, 1981.

CHAPTER NO. 283

AN ACT TO PERMIT A MUNICIPALITY TO GRANT A NONEXCLUSIVE FRANCHISE WITHOUT SUBMITTING THE APPLICATION THEREFOR TO THE ELECTORS; AMENDING SECTION 7-5-4321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4321, MCA, is amended to read:

"7-5-4321. Grant of exclusive franchise — election required. (1) The council may not grant *an exclusive* franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident thereto.

(2) No *exclusive* franchise for any purpose may be granted by any city or town or by the mayor or city council thereof to any person, association, or corporation without first submitting the application therefor to the electors of the city."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 6, 1981.

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CHAPTER NO. 284

AN ACT TO REVISE THE RESPONSIBILITIES OF THE ALCOHOLISM SERVICES CENTER LOCATED AT THE GALEN STATE HOSPITAL AND TO CHANGE ITS NAME; AMENDING SECTION 53-6-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-304, MCA, is amended to read:

"53-6-304. Alcoholic treatment center. (1) There is an *alcoholic treatment* center located at the Galen state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;

(b) an "alcoholic" is a person suffering from the illness of alcoholism.

(3) The *alcoholic treatment* center shall provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the *treatment* of the illness of alcoholism or the complications thereof."

Approved April 6, 1981.

CHAPTER NO. 285

AN ACT TO REVISE THE QUALIFICATION REQUIREMENTS FOR SUPERINTENDENT OF THE GALEN STATE HOSPITAL; AMENDING SECTION 53-6-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-302, MCA, is amended to read:

"53-6-302. Qualifications of superintendent. The superintendent of Galen state hospital shall be *an individual with a minimum of 3 years' full-time hospital administration experience and who is either:*

(1) a physician legally qualified to practice medicine in Montana; or

(2) a person with a master's degree in hospital administration, business, or in a health care- or human services-related field."

Approved April 6, 1981.

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CHAPTER NO. 286

AN ACT TO REPEAL THE LAW RELATING TO EUGENICAL STERILIZATION AND THE BOARD OF EUGENICS; REPEALING SECTIONS 2-15-2304 AND 53-23-101 THROUGH 53-23-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 2-15-2304 and 53-23-101 through 53-23-105, MCA, are repealed.

Approved April 6, 1981.

CHAPTER NO. 287

AN ACT TO PROVIDE A METHOD FOR ALLOCATING FUNDING FOR SECONDARY VOCATIONAL AND INDUSTRIAL ARTS PROGRAMS BASED UPON THE RELATIVE ADDITIONAL COSTS INCURRED BY HIGH SCHOOL DISTRICTS IN PROVIDING SUCH PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Funding for secondary vocational education and industrial arts programs — application — rules.** (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary vocational education and industrial arts. The money shall be allocated to high school districts providing approved secondary vocational education and industrial arts programs in accordance with [this act].

(2) A high school district providing secondary vocational education and industrial arts programs must apply to the superintendent of public instruction for funds available under [this act]. The superintendent of public instruction shall by rule prescribe the method for ANB determination, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding not inconsistent with Title 20, chapter 7, part 3.

(3) A secondary vocational education or industrial arts program or a course in such a program in a high school district may not be funded until that program or course has been offered by the school district for 1 school year.

(4) As used in [this act] the term "school district" means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

Section 2. **Distribution of secondary vocational education and industrial arts funds.** (1) The superintendent of public instruction shall

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categorize secondary vocational programs into one of five weighted categories based upon the relative additional costs of those programs.

(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.

(3) The superintendent of public instruction shall adjust the weighted categories as necessary to assure that the procedures outlined in subsections (4) and (5) do not result in entitlements that exceed the amount appropriated.

(4) Funding shall be based upon the average number belonging (ANB) to secondary vocational education and industrial arts programs of the high school district in the year immediately preceding the year for which funding is requested. The ANB shall be computed for each separate secondary vocational education and industrial arts program.

(5) For secondary vocational education programs the ANB generated for each category established in subsection (1) shall be multiplied by the factor for that category, and the product thereof shall be multiplied by the applicable ANB dollar value established by 20-9-319. Industrial arts programs shall be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of all secondary vocational education and industrial arts categories so computed.

(6) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money so received by the high school district must be deposited into the subfund of the miscellaneous program fund established by 20-9-507 and shall be expended only for approved secondary vocational education and industrial arts programs. The expenditure of the money so received shall be reported in the annual trustees' report as required by 20-9-213.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 20, chapter 7, part 3, and the provisions of Title 20 apply to sections 1 and 2.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 6, 1981.

CHAPTER NO. 288

AN ACT TO CLARIFY THE REPORTING REQUIREMENTS FOR PERSONS SUBJECT TO THE GROSS PROCEEDS TAX AND METALLIFEROUS MINES LICENSE TAX AND TO REQUIRE ANY NECESSARY ASSAY TO BE COMPLETED PRIOR TO MIXTURE OF ORES AND CONCENTRATES AND SHIPMENT FROM THIS STATE; AMENDING SECTIONS 15-23-802 AND 15-37-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-802, MCA, is amended to read:

"15-23-802. Metal mines — ad valorem taxation — reports and sampling. *(1)* Each person mining or extracting gold, silver, copper,

lead, or other metals from *any mine or mining property located within this state* must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine *or mining property* owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine *or mining property*;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore, concentrate, or other mineral products or deposits have been shipped or sold during the period covered by the statement;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of such ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the gross value of product in dollars and cents; and

(g) any other information requested by the department.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore, concentrate, or other mineral products or deposits are shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property."

Section 2. Section 15-37-104, MCA, is amended to read:

"15-37-104. Mine operator's statement of gross value — reports and sampling. *(1)* Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than April 15 in such year when engaged in or carrying on any such business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the department of revenue and must be delivered to the department not later than April 15. The department may grant a reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:

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(a) the name, address, *and telephone number* of the owner, lessee, *or operator* of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, *concentrate,* or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore *or concentrate* has been shipped or sold during the period covered by the statement and such other information as the department may require;

(e) the gross yield of such ores, *concentrates,* mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores, *concentrates,* or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property."

Approved April 6, 1981.

CHAPTER NO. 289

AN ACT TO INCLUDE IN THE CRIME OF AGGRAVATED ASSAULT THE INFLICTION OF BODILY INJURY UPON A PERSON WHO IS RESPONSIBLE FOR THE CARE OR CUSTODY OF A PRISONER; AMENDING SECTION 45-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another;

(b) bodily injury to another with a weapon;

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer *or a person who is responsible for the care or custody of a prisoner.*

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(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222."

Approved April 6, 1981.

CHAPTER NO. 290

AN ACT TO CHANGE THE DEADLINE FOR SUBMISSION OF INFORMATION BY AGENCIES TO THE BUDGET DIRECTOR; AMENDING SECTION 17-7-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadline. (1) *It* shall be the duty of each department, agency, and office to submit information requested by the budget director on or before *September 1* in the even year preceding the convening of the legislature.

(2) If any department, institution, or agency shall fail to present such requested information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare a budget request on behalf of such department, institution, or agency, based upon his studies of the operations, plans, and needs thereof."

Approved April 7, 1981.

CHAPTER NO. 291

AN ACT TO GENERALLY REVISE THE PORK RESEARCH AND MARKETING ACT; RAISING ASSESSMENTS; REVISING ALLOCATION OF EXPENDITURES; AMENDING SECTIONS 81-8-605, 81-8-607, AND 81-8-610, MCA; REPEALING SECTION 81-8-613, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-605, MCA, is amended to read:

"81-8-605. Election of chairman — time of meetings. At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least *twice every year* and at such other times as called by the chairman or by any two members of committee."

Section 2 Section 81-8-607, MCA, is amended to read:

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"81-8-607. Assessments. There is hereby assessed a per head levy of *20* cents on all swine sold by producers to purchasers beginning July 1, *1981.* The assessment shall be deducted and collected at the time of sale from the producer's receipt of sale and remitted to department of livestock by purchaser under the provisions of this part."

Section 3. Section 81-8-610, MCA, is amended to read:

"81-8-610. Research and marketing account — sources — use — expenditures. (1) The proceeds of all assessments made, paid, and collected under this part and the proceeds from all gifts, grants, or donations to the department of livestock for research authorized by this part shall be deposited in the federal and private revenue fund for the use of the committee as provided in this part.

(2) The account shall be maintained for the purposes of this part and shall be separate and apart from all other accounts of the department.

(3) Fifty percent of all unrefunded assessments shall be paid to the national pork producer council.

(4) The committee may be assessed costs by the department *for the services the department provides upon request of the committee or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of the services provided."*

Section 4. **Repealer.** Section 81-8-613, MCA, is repealed.

Section 5. **Effective date.** This act is effective on July 1, 1981.

Approved April 7, 1981.

CHAPTER NO. 292

AN ACT REESTABLISHING THE BOARD OF RADIOLOGIC TECHNOLOGISTS UNDER THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING FOR A NEW TERMINATION DATE; AND AMENDING SECTION 2-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board reestablished.** The board of radiologic technologists created by 2-15-1614 is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

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(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

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(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

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(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614."

Approved April 7, 1981.

CHAPTER NO. 293

AN ACT RELATING TO THE ADMINISTRATION OF THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE DEPARTMENT ALLOCATE CENTRAL SERVICES COSTS BASED ON EQUITABLE CRITERIA, PRESCRIBE FORMAT OF FORMS USED BY LICENSING BOARDS; REQUIRE APPLICANTS FOR LICENSURE OR RENEWAL TO REPORT ANY LEGAL OR DISCIPLINARY ACTIONS AGAINST THEM RELATING TO THEIR AREA OF LICENSURE; AND REQUIRING THE DEPARTMENT TO SUBMIT A BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE DESCRIBING EACH LICENSING BOARD'S ACTIVITIES DURING THE BIENNIUM; AND AMENDING SECTION 37-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of professional and occupational licensing shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

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(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on *an equitable basis as determined by the department.*"

Section 2. **Standardized forms.** It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms, and facilitate automated printing and computerization.

Section 3. **Reporting disciplinary actions against licensees.** The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

Section 4. **Biennial report to governor and legislature.** The department, in cooperation with each licensing board, shall prepare a biennial report. In addition to the information prescribed by the governor under 2-7-102, the biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant.

Section 5. **Codification instruction.** Sections 2, 3, and 4 are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1 apply to sections 2, 3, and 4.

Approved April 7, 1981.

CHAPTER NO. 294

AN ACT TO CLARIFY THAT UPON PETITION FOR REHEARING OF A SUPREME COURT DECISION THE ADVERSE PARTY MAY FILE OBJECTIONS WHETHER OR NOT A REPLY IS REQUESTED BY THE COURT; AMENDING SECTION 46-20-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-20-705, MCA, is amended to read:

"**46-20-705. Petitions for rehearing.** (1) A petition for rehearing may be filed within 10 days after the decision of the supreme court has

been rendered unless the time is shortened or enlarged by order. The adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days.

(2) A petition for rehearing may be presented upon the following grounds and none others:

(a) that some facts material to the decision or some question decisive of the case submitted by counsel was overlooked by the court; or

(b) that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed.

(3) Oral argument in support of the petition will not be permitted. Six copies of the petition, produced in accordance with part 5 of this chapter, shall be filed with the clerk."

Approved April 7, 1981.

CHAPTER NO. 295

AN ACT TO REVISE THE COST OF COPIES OF COURT PROCEEDINGS; AMENDING SECTION 3-5-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-604, MCA, is amended to read:

"**3-5-604. Copies of proceedings.** (1) Each reporter must furnish, upon request, with all reasonable diligence, to the defendant in a criminal case or a party or his attorney in a civil case in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings upon the trial or hearing or a part thereof, upon payment by the person requiring the same of *10* cents per folio.

(2) If the county attorney, attorney general, or judge requires a copy in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished without cost.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a copy, it shall be furnished to him and paid for by the county."

Approved April 8, 1981.

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CHAPTER NO. 296

AN ACT TO REVISE PROVISIONS PERTAINING TO RADIOLOGIC TECHNOLOGISTS; AMENDING SECTIONS 2-15-1614 AND 37-14-302, MCA; AND REPEALING SECTION 37-14-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1614, MCA, is amended to read:

"2-15-1614. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor:

(a) two members shall be radiologists licensed to practice medicine in Montana;

(b) one member shall be a *person granted an unlimited permit issued by the board pursuant to 37-14-306*;

(c) one member shall be a *public member*; and

(d) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-14-302, MCA, is amended to read:

"37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs."

Section 3. **Repealer.** Section 37-14-312, MCA, is repealed.

Approved April 8, 1981.

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CHAPTER NO. 297

AN ACT TO AMEND LAWS RELATING TO FOSTER CARE FACILITIES; TO CLARIFY FINANCIAL RESPONSIBILITY FOR PAYMENT FOR CHILDREN PLACED IN FOSTER CARE FACILITIES; TO REQUIRE COURT REVIEW OF CHILDREN IN FOSTER PLACEMENTS THROUGH A FOSTER CARE REVIEW COMMITTEE; AMENDING SECTIONS 41-3-104, 41-3-501, 41-5-801, AND 53-4-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-104, MCA, is amended to read:

"41-3-104. Payment for support of youth in need of care — reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing a youth in need of care in a licensed family foster home, child care agency, group home, or treatment facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of *the* children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of *the* children for *no more than* one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after *the* claim is presented.

(3) The department shall conduct or arrange for the review required under [section 2] of a child placed in a licensed family foster home, child care agency, group home, or treatment facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child as set forth in this section."

Section 2. **Foster care review committee.** (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than four or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court; and

(d) a representative of a local school district.

(2) When a child is in foster care under the supervision of the department or the youth court or if payment for care is made pursuant to 41-3-104 or 41-5-801(2), the committee shall conduct a review of the foster

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care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court.

Section 3. Section 41-3-501, MCA, is amended to read:

"41-3-501. Definitions. (1) Any person owning or operating a home or institution into which home or institution he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, *nor* ward shall be deemed to be an "operator" of a "foster home or boarding home" within the meaning of this chapter, except that this chapter shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(2) The word "person" where used in this chapter shall include any individual, partnership, voluntary association, or corporation."

Section 4. Section 41-5-801, MCA, is amended to read:

"41-5-801. Shelter care and foster homes. (1) The youth court may establish procedures for finding, maintaining, and administering shelter care and foster homes or other homes approved by the court for youth within the provisions of this chapter.

(2) *Pursuant to 41-3-104,* the department of social and rehabilitation services shall *finance foster homes established by the youth court if:*

(a) the foster home is licensed by the department;

(b) the youth court enters into an agreement according to federal regulations with the department for the placement of children;

(c) the placement of the child is reviewed as required by [section 2]; and

(d) the youth court retains supervision of the child in placement.

(3) The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this chapter may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services."

Section 5. Section 53-4-112, MCA, is amended to read:

"53-4-112. Duty to strengthen child welfare services. The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in *licensed* family foster homes, *child care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-104 and [section 2].*"

Approved April 8, 1981.

CHAPTER NO. 298

AN ACT ESTABLISHING MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT INSURANCE; REQUIRING THE COMMISSIONER OF INSURANCE TO ADOPT RULES ESTABLISHING POLICY PROVISION REQUIREMENTS, MINIMUM BENEFIT STANDARDS, LOSS RATIO STANDARDS, AND DISCLOSURE STANDARDS FOR SUCH POLICIES; AND GIVING THE COMMISSIONER OF INSURANCE AUTHORITY TO ADOPT RULES ESTABLISHING AN INFORMATIONAL BROCHURE FOR SUCH POLICIES AND AUTHORITY TO ADOPT RULES ESTABLISHING CAPTIONS OR NOTICE REQUIREMENTS FOR CERTAIN NONMEDICARE SUPPLEMENT POLICIES IDENTIFYING THEM AS SUCH; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Medicare Supplement Insurance Minimum Standards Act".

Section 2. **Purpose.** The purpose of [this act] is to establish minimum standards for medicare supplement insurance policies and to establish a regulatory program that meets the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980, approved June 9, 1980.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

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(b) in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means a certificate issued under a group medicare supplement policy that has been delivered or issued for delivery in this state.

(3) "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(4) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members;

(c) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of [this act] or policies issued to employees or members as additions to franchise plans in existence on [the effective date of this act].

Section 4. **Standards for policy provisions — rules.** (1) The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies. The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage;

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(d) probationary periods;

(e) benefit limitations, exceptions, and reductions;

(f) elimination periods;

(g) requirements for replacement;

(h) recurrent conditions; and

(i) definitions of terms.

(2) The commissioner may adopt reasonable rules that prohibit policy provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than 6 months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

Section 5. **Minimum standards for benefits — rules.** The commissioner shall issue reasonable rules to establish minimum standards for benefits for medicare supplement policies.

Section 6. **Loss ratio standards.** Medicare supplement policies are expected to return to policyholders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

Section 7. **Disclosure standards — informational brochure — rules.** (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

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(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy;

(iii) a statement of the renewal provisions including any reservation by the insurer of a right to change premiums;

(iv) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare by reason of age.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare by reason of age, other than:

(a) medicare supplement policies;

(b) disability income policies;

(c) basic, catastrophic, or major medical expense policies;

(d) single premium, nonrenewable policies; or

(e) other policies defined in [subsection (4) of section 3].

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare by reason of age.

Section 8. **Notice of free examination.** (1) Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, must have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant has the right to return the policy or certificate within 10 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

(2) Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of

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age must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

Section 9. **Administrative procedures.** Rules adopted pursuant to [this act] are subject to the provisions of 33-1-313 and Title 2, chapter 4.

Section 10. **Codification instruction.** This act is intended to be codified as a new part in Title 33, chapter 22, and the provisions of Title 33, apply to this act.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1981.

CHAPTER NO. 299

AN ACT TO ASSESS THE COSTS OF IMPANELING A JURY AGAINST PARTIES WHO FAIL TO INFORM THE COURT OF A SETTLEMENT OF THE ISSUES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Costs of impaneling jury after settlement reached.** In any civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county general fund.

Approved April 8, 1981.

CHAPTER NO. 300

AN ACT TO ALLOW COUNTY ATTORNEYS AND DEPUTY COUNTY ATTORNEYS TIME TO COMPLETE LEGAL MATTERS REMAINING FROM PREVIOUS PRIVATE PRACTICE OF LAW; AMENDING SECTION 7-4-2704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2704, MCA, is amended to read:

"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for his own

services, must not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family *and except as provided in subsection (4).*

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which he has a direct interest *and except as provided in subsection (4).*

(4) Any elected or appointed county attorney and any deputy county attorney shall, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date he takes office, to complete any pending matters remaining from any previous private practice of law. During such time the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law."

Approved April 8, 1981.

CHAPTER NO. 301

AN ACT TO ALLOW CERTAIN BOARDS OF COUNTY COMMISSIONERS AND COUNTY ATTORNEYS TO ESTABLISH THE OFFICE OF COUNTY ATTORNEY AS A PART-TIME POSITION; AMENDING SECTION 7-4-2706, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2706, MCA, is amended to read:

"7-4-2706. County attorney to be full or part time — resolution — salary. *(1)* In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year."

Approved April 8, 1981.

CHAPTER NO. 302

AN ACT TO REQUIRE THE USE OF SIMPLIFIED LANGUAGE IN POLICIES, CONTRACTS, AND CERTIFICATES OF LIFE, DISABILITY, CREDIT LIFE, AND CREDIT DISABILITY INSURANCE; TO ESTABLISH MINIMUM STANDARDS FOR LANGUAGE USED IN THOSE FORMS; TO ADOPT THE FLESCH READING EASE TEST FOR READABILITY OR OTHER TESTS IN THE DISCRETION OF THE COMMISSIONER OF INSURANCE; AND GRANTING THE COMMISSIONER OF INSURANCE POWER TO APPROVE FORMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Life and Disability Insurance Policy Language Simplification Act".

Section 2. **Purpose.** (1) The purpose of this [act] is to establish minimum standards for language used in policies, contracts, and certificates of life, disability, credit life, and credit disability insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.

(2) This [act] is not intended to increase the risk assumed by insurance companies or other entities subject to this [act] or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, disability, credit life, or credit disability insurance policies. This [act] is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

Section 3. **Definitions.** As used in this [act], the following definitions apply:

(1) "Company" or "insurer" means any life or disability insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar types of organizations.

(2) "Policy" or "policy form" means any:

(a) policy, contract, plan, or agreement of life or disability insurance, including credit life and credit disability insurance, delivered or issued for delivery in this state by any company subject to this [act];

(b) certificate, contract, or policy issued by a fraternal benefit society; and

(c) certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

Section 4. **Application — exceptions.** (1) This [act] applies to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under this [act], but nothing in this [act] applies to:

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(a) a policy which is a security subject to federal jurisdiction;

(b) a group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy, but a certificate issued pursuant to a group policy delivered or issued for delivery in this state is not exempt;

(c) a group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(d) a form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this [act]; or

(e) the renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under this [act].

(2) This [act] provides the exclusive manner for determining language simplification standards for any policy forms.

(3) A non-English language policy delivered or issued for delivery in this state is in compliance with [section 5(1)(a)] if the insurer certifies that the policy is translated from an English language policy which complies with [section 5(1)(a)].

Section 5. **Minimum policy language simplification standards.** (1) In addition to any other requirements of law, no policy form, except as stated in [section 4], may be delivered or issued for delivery in this state on or after the date such form must be approved under this [act], unless:

(a) the text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);

(b) it is printed, except for specification pages, schedules, and tables, in not less than 10-point type, 1-point leaded;

(c) the style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(d) it contains a table of contents or an index of the principal sections of the policy if the policy has more than 3,000 words printed on three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

(2) For the purposes of this section, a Flesch reading ease test score is measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire form is analyzed. For policy forms containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples must be separated by at least 20 printed lines.

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(b) The number of words and sentences in the text is counted and the total number of words is divided by the total number of sentences. The figure obtained is multiplied by a factor of 1.015.

(c) The total number of syllables is counted and divided by the total number of words. The figure obtained is multiplied by a factor of 84.6.

(d) The sum of the figures computed under (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of subsection (2)(b), (c), and (d), the following procedures are used:

(i) a contraction, hyphenated word, or numbers and letters, if separated by spaces, are counted as one word;

(ii) a unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence; and

(iii) a syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this section includes all printed matter except the following:

(i) the name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules, or tables; and

(ii) policy language which is drafted to conform to the requirements of a federal law, regulation, or agency interpretation; policy language required by a collectively bargained agreement; medical terminology; words which are defined in the policy; and policy language required by law or regulation. The insurer must identify the language or terminology excepted by this subsection and certify in writing that the language or terminology is entitled to be excepted by this subsection.

(3) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

(4) Filings subject to this section must be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with [section 7]. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(5) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

Section 6. **Construction — time period.** Nothing in this [act] may be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

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Section 7. **Powers of the commissioner.** The commissioner may authorize a lower score than the Flesch reading ease score required in [section 5(1)(a)] whenever, in his sole discretion, he finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

Section 8. **Approval of forms.** A policy form meeting the requirements of [section 5(1)(a)] may be approved by the commissioner notwithstanding the provisions of other laws that specify content of policies if the approved policy form provides policyholders and claimants protection not less favorable than they would be entitled to under such laws.

Section 9. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to this act.

Section 10. **Applicability.** (1) Except as provided in section 4, this act applies to all policy forms filed on or after July 1, 1983. No policy form may be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under this act. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by this act need not be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in section 5(4).

(2) The commissioner may, in his sole discretion, extend the dates in subsection (1).

Approved April 8, 1981.

CHAPTER NO. 303

AN ACT TO GENERALLY REVISE AND CLARIFY THE INSURANCE LAWS OF THE STATE OF MONTANA; AMENDING SECTIONS 33-1-501, 33-2-109, 33-2-110, 33-2-116, 33-2-119, 33-2-307, 33-2-705, 33-2-708, 33-2-709, 33-3-204, 33-3-205, 33-3-432, 33-7-405, 33-7-509, 33-7-525, 33-7-526, 33-15-101, 33-15-303, 33-18-210, 33-22-111, 33-22-205, 33-22-232, 33-22-301, 33-22-812, 33-24-102, 33-24-103, 33-25-102, AND 33-30-1001, MCA; AND REPEALING SECTIONS 33-3-501 AND 33-7-527 THROUGH 33-7-530, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) No insurance policy or annuity contract form, application form, printed rider or endorsement

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form, or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner *of this state and the state of domicile of the insurer, where so required.* This provision shall not apply to surety bonds; specially rated inland marine risks; or policies, riders, endorsements, or form of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than *60* days in advance of any such delivery. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional *60* days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial *60-day* period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

(6) This section and 33-1-502 shall not apply as to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in this state or delivered in this state, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances."

Section 2. Section 33-2-109, MCA, is amended to read:

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"33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as required under 33-2-110:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Property	400,000
Marine	400,000
Casualty	
All lines except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty, or surety)	800,000

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 3, and domestic reciprocal insurers shall be governed by chapter 5.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus."

Section 3. Section 33-2-110, MCA, is amended to read:

"33-2-110. Special surplus required. In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by 33-2-109, special surplus shall be possessed by insurers as follows:

(1) All stock insurers and mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than 5 years or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than 5 years when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than 100% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal) otherwise required under 33-2-109 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance as authorized insurers in one or more states of the United States for more than 5 years

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shall possess, when first authorized in this state, surplus or additional surplus equal to not less than 50% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) otherwise required under 33-2-109.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than $100,000, in addition to the capital (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) required by 33-2-109. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subsections (1) and (2) of this section."

Section 4. Section 33-2-116, MCA, is amended to read:

"33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority. If he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within *180* days after its completion.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner."

Section 5. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

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(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under part 3 of this chapter;

(f) has reinsured all its risks in their entirety in another insurer.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 6. Section 33-2-307, MCA, is amended to read:

"33-2-307. Surplus lines in solvent insurers. A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:

(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which *meets the requirements of 33-2-109 and 33-2-110, as applicable*; or

(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least *$1 million* within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States."

Section 7. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (3) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all

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kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the *total* charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾ % of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼ % of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾ % of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼ % of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾ % of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of 2 ¾ % of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

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(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Section 8. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers

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as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00

(iii) appointment of agent, each insurer *10.00*

(iv) annual renewal, each insurer *10.00*

(v) temporary license 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license *10.00*

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 100.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 100.00

(iii) appointment of agent, each insurer *10.00*

(iv) annual renewal, each insurer *10.00*

(v) amendment of license (excluding additions thereto) or reissuance of master license *10.00*

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(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual renewal of license 5.00

(h) examination for license as agent or solicitor, each examination 10.00

(i) surplus line agent's license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal of license 25.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual renewal of license 10.00

(k) insurance vending machine license, each machine, each year 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 9. Section 33-2-709, MCA, is amended to read:

"33-2-709. Retaliatory fees, taxes, and other obligations. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the agents or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or

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restrictions directly imposed upon similar insurers or upon the agents or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the agents or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to *any fees in conjunction with the licensing of insurance agents,* personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States."

Section 10. Section 33-3-204, MCA, is amended to read:

"33-3-204. Initial qualifications — domestic mutuals. (1) When newly organized, a domestic mutual insurer may be authorized to transact any of the kinds of insurance *as are permitted under 33-2-108.*

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code and must have *unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance as in 33-2-109, subject further to the additional special surplus requirements of 33-2-110 applicable to such stock insurer. The minimum amount of surplus must thereafter be maintained unimpaired and*

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placed on deposit with the commissioner. The deposit is subject to the provisions of chapter 2, part 6, of this title and 33-2-111."

Section 11. Section 33-3-205, MCA, is amended to read:

"**33-3-205. Formation of mutual insurer — bond.** (1) Before soliciting applications for insurance *to raise surplus funds to qualify* for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of *$50,000*, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) for the prompt return to applicant members of all premiums collected in advance;

(b) for payment of all indebtedness of the corporation; and

(c) for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within 1 year after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner *$50,000* in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than *$50,000*, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it."

Section 12. Section 33-3-432, MCA, is amended to read:

"**33-3-432. Impairment of capital or assets.** (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under 33-3-204 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under chapter 2, part 8, for the investment of the insurer's funds; if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient surplus under this code.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such 60-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 9; except that if such deficiency exists because of

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increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed."

Section 13. Section 33-7-405, MCA, is amended to read:

"33-7-405. Reserve valuation. (1) As a part of the annual statement required under 33-7-404, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided, the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months.

(2) Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to January 1, 1962, shall be determined in accordance with the provisions of law applicable prior to January 1, 1961, and as to certificates issued on or after January 1, 1962, shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(3) Reserves according to the commissioners' reserve valuation method for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) a net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which

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a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such certificate; and

(b) a net 1-year term premium for such benefits provided for in the first certificate year.

(4) Reserves according to the commissioners' reserve valuation method for life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, annuity and pure endowment benefits, disability and accidental death benefits in all certificates and contracts, and all other benefits except life insurance and endowment benefits shall be calculated by a method consistent with the principles of subsection (3) above.

(5) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in subsections (7) and (8) below.

(6) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(7) The minimum standards of valuation for certificates issued prior to January 1, 1962, shall be those provided by the law applicable immediately prior to January 1, 1961, but not lower than the standards used in the calculating of rates for such certificates.

(8) The minimum standard of valuation for certificates issued after January 1, 1962, shall be 3 ½% interest and the following tables *(except that a society may value its certificates in accordance with valuation standards authorized by the laws of this state for the valuation of policies issued by life insurance companies)*:

(a) for certificates of life insurance, American men ultimate table of mortality, with Bowerman's or Davis' extension thereof; or with the consent of the commissioner, the commissioner's 1941 standard ordinary mortality table or the commissioner's 1941 standard industrial table of mortality;

(b) for annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates, the 1937 standard annuity table;

(c) for disability benefits issued in connection with life benefit certificates, Hunter's disability table, which, for active lives, shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as class III disability table (1926) modified to conform to the contractual waiting period shall be used in computing reserves for disability benefits under a contract which presumes that total disability shall be considered to be permanent after a specified period;

(d) for accidental death benefits issued in connection with life benefit certificates, the intercompany double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) for noncancelable accident and health benefits, the class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

(9) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extrahazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

(10) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required hereunder, but the contractual rights of any insured member shall not be affected thereby."

Section 14. Section 33-7-509, MCA, is amended to read:

"33-7-509. Nonforfeiture benefits, cash surrender values, certificate loans, and other options — value — term. (1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans, and such other options as its laws may permit. As to certificates issued on and after January 1, 1961, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

(2) In the case of certificates other than those for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the 1941 standard industrial table, *or any more recent table made applicable to life insurance companies,* the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) the reserve under the certificate determined on the basis specified in the certificates; and

(b) the sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrendered charge equal to 2 ½% of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

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(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American men ultimate table of mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130% of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the 1941 standard industrial table, *or any more recent table made applicable to life insurance companies,* every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables."

Section 15. Section 33-7-525, MCA, is amended to read:

"33-7-525. Agent defined. The term "insurance agent" as used in this chapter means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident and health insurance, or annuity contract. The term "insurance agent" *does* not include any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained."

Section 16. Section 33-7-526, MCA, is amended to read:

"33-7-526. Agent license required — penalty. (1) Agents of societies shall be *considered to be insurance agents and subject to the same licensing requirements as insurance agents under chapter 17 of this code, except that no examination is required of an individual lawfully licensed in this state as an agent for a fraternal benefit society as to the kind of insurance to be transacted as of or immediately prior to [the effective date of this act] and thereafter continuing to be so licensed.*

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract, except to a licensed insurance agent of such society.

(3) Any person who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall be guilty of a misdemeanor."

Section 17. Section 33-15-101, MCA, is amended to read:

"33-15-101. Scope. This chapter shall not apply as to:

(1) reinsurance;

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(2) policies or contracts not issued for delivery in this state or delivered in this state;

(3) ocean marine and foreign trade insurances;

(4) title insurance, except as to the following provisions: *33-15-102,* 33-15-103, *33-15-303,* 33-15-305, 33-15-306, *33-15-307,* 33-15-316, *and 33-15-411.*"

Section 18. Section 33-15-303, MCA, is amended to read:

"33-15-303. Contents of policies in general — identification. (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance thereunder takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(3) Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies.

(4) All policies and annuity contracts issued by insurers and the forms thereof filed with the commissioner shall have printed thereon an appropriate designating letter or figure or combination of letters or figures or terms identifying the respective forms of policies or contracts, together with the year of adoption of such form. Whenever any change is made in any such form, the designating letters, figures, or terms and year of adoption thereon shall be correspondingly changed."

Section 19. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) No title, property, casualty, or surety insurer or any employee, representative, agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy or any employee of the insured may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

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(3) No such insurer may make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) No such insurer may make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) No such insurer may make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) No such insurer may refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual, but an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) No such insurer may terminate or modify coverage or refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; however, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection is not to be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract."

Section 20. Section 33-22-111, MCA, is amended to read:

"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of

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disability insurance, including individual, group, and blanket policies and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist, or psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 21. Section 33-22-205, MCA, is amended to read:

"33-22-205. Time limit on certain defenses. (1) There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After *2* years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such *2-year* period.

(2) No claim for loss incurred or disability (as defined in the policy) commencing after *2* years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(2) Policy provision (1) of subsection (1) shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial *2-year* period or to limit the application of 33-22-222 through 33-22-226 in the event of misstatement with respect to age or occupation or other insurance.

(3) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of policy provision (1) of subsection (1) the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of *2* years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.""

Section 22. Section 33-22-232, MCA, is amended to read:

"33-22-232. Renewal at option of insurer. Disability insurance policies, other than accident insurance only policies, in which the insurer

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reserves the right to refuse renewal shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option."

Section 23. Section 33-22-301, MCA, is amended to read:

"33-22-301. Coverage of newborn under family policy. (1) Each policy of disability insurance or certificate issued thereunder shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) No policy or certificate of insurance may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period."

Section 24. Section 33-22-812, MCA, is amended to read:

"33-22-812. Policy forms to be approved — procedure — disapproval. (1) The forms of the policies, applications, certificates or other evidence of insurance coverage, and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner.

(2) The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading, or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided.

(3) In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give

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due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state, including any differing operating methods of the insurers joining in the issue of the policy.

(4) In exercising the powers conferred upon him by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

(5) The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe."

Section 25. Section 33-24-102, MCA, is amended to read:

"33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss *or damage* and the property insured *is considered to be a total loss*, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon."

Section 26. Section 33-24-103, MCA, is amended to read:

"33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any *total* loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets."

Section 27. Section 33-25-102, MCA, is amended to read:

"33-25-102. Rates filed with commissioner. (1) Every title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. *The rates shall be all-inclusive of the total charge for such insurance as specified in the policy and shall be accompanied by supporting data.*

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

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(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner."

Section 28. Section 33-30-1001, MCA, is amended to read:

"33-30-1001. Newborn infants covered by insurance by health service corporation. No disability insurance plan or group disability insurance plan issued by a health service corporation may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. *If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period."*

Section 29. **Repealer.** Sections 33-3-501 and 33-7-527 through 33-7-530, MCA, are repealed.

Approved April 8, 1981.

CHAPTER NO. 304

AN ACT TO PERMIT THE DEPARTMENT OF INSTITUTIONS TO CONTRACT WITH PUBLIC OR PRIVATE CORPORATIONS FOR THE CONFINEMENT OF SELECTED INMATES; AMENDING SECTION 53-30-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-106, MCA, is amended to read:

"53-30-106. Contracts for confinement of inmates in other institutions. *(1)* When the state prison is inadequate to contain an inmate sentenced to confinement there, the department of institutions *may* enter into contracts with the federal government, other states, or the commissioners of counties that have suitable jails for confining inmates sentenced to the state prison.

(2) Within budgetary limits, the department may also enter into contracts with public or private corporations for the confinement of selected inmates where suitable programs have been established."

Approved April 8, 1981.

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CHAPTER NO. 305

AN ACT TO REVISE THE METHOD USED BY THE DEPARTMENT OF HIGHWAYS TO SELL AN INTEREST IN REAL PROPERTY; AMENDING SECTIONS 60-4-202 AND 60-4-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-202, MCA, is amended to read:

"60-4-202. Sale of interest in real property. The department may sell an interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of $100, sale shall be made to the highest bidder at public auction. The sale shall be conducted as provided in *77-2-321*."

Section 2. Section 60-4-203, MCA, is amended to read:

"60-4-203. Conduct of sale. (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for *4* successive weeks. *The notice of sale shall contain the information required by 77-2-322.* Sale shall be held in the county wherein the property is located.

(2) Before the sale of an interest having a value in excess of $100, the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1981.

CHAPTER NO. 306

AN ACT TO CLARIFY THAT IT IS LAWFUL TO TAKE WILDLIFE TO PROTECT PERSONS OR LIVESTOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Taking of wildlife to protect persons or livestock.** Nothing in this chapter may be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this

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chapter if such wildlife is molesting, assaulting, killing, or threatening to kill any person or livestock. Any person who so takes any wildlife protected by this chapter shall notify the department within 72 hours.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 3, and the provisions of section 1 apply to Title 87, chapter 3, and the provisions of Title 87 apply to section 1.

Approved April 8, 1981.

CHAPTER NO. 307

AN ACT TO REESTABLISH THE COMMISSION FOR HUMAN RIGHTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Commission for Human Rights and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Commission for Human Rights be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The commission for human rights is reestablished for 6 years pursuant to 2-8-122 with the existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(c) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(d) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(e) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(f) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

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(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

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(5) The following agency terminates on July 1, 1987: commission for human rights, department of labor and industry, created by 2-15-1706."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1981.

CHAPTER NO. 308

AN ACT TO CLARIFY AND REVISE THE ISSUANCE AND PAYMENT OF SPECIAL IMPROVEMENT DISTRICT AND RURAL SPECIAL IMPROVEMENT DISTRICT BONDS; CLARIFYING THAT THE BONDS ARE NOT GENERAL OBLIGATION BONDS; RESTRICTING THE LEVYING OF A TAX TO PROVIDE FUNDS FOR THE REVOLVING FUND TO INSTANCES WHEN THE REVOLVING FUND DOES NOT EXCEED 5 PERCENT OF THE OUTSTANDING BONDS; AND REQUIRING THAT FUNDS IN THE REVOLVING FUND MAY NOT BE TRANSFERRED TO THE GENERAL FUND IF THE BALANCE IN THE REVOLVING FUND IS LESS THAN 5 PERCENT; AMENDING SECTIONS 7-12-2170, 7-12-2182, 7-12-2186, 7-12-4202, 7-12-4222, AND 7-12-4227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2170, MCA, is amended to read:

"7-12-2170. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or
(Bond No. ....)

Dollars
$....

Interest at the rate of ....% per annum, payable annually.

Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the county of ...., Montana

The county treasurer of .... County, Montana, will pay to .... or bearer the sum of .... dollars as authorized by resolution No. ...., as passed on the .... day of ...., 19.., creating or maintaining the special improvement district No. .... for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of .... County, Montana.

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This warrant (or bond) bears interest at the rate of ....% per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of .... each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts as described in said resolution hereinbefore referred to *and is not a general obligation of the county.*

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened, and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of ...., Montana, relating to the issuance thereof.

Dated at ...., Montana, this .... day of ...., 19.., County of ...., Montana.

(SEAL)

By ...., chairman of the board of county commissioners.

(SEAL)

.....
County Clerk

Registered at the office of the county treasurer of .... County, Montana, this .... day of ...., 19...

.....
County Treasurer"

Section 2. Section 7-12-2182, MCA, is amended to read:

"7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of

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such fund. *However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then outstanding rural special improvement district bonds and warrants. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then outstanding rural special improvement district bonds and warrants.*

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of the board, be transferred to the revolving fund. After all the bonds and warrants issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund."

Section 3. Section 7-12-2186, MCA, is amended to read:

"7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of *5% of the then outstanding rural special improvement district bonds and warrants and the board considers any part of the excess to be greater than the amount* necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order *the amount the board considers greater than the amount necessary* or any part thereof transferred to the general fund of the county."

Section 4. Section 7-12-4202, MCA, is amended to read:

"7-12-4202. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or (Bond No. ....)	Dollars $....

Interest at the rate of ....% per annum, payable semiannually.

Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the city of ...., Montana

The treasurer of the city of ...., Montana, will pay to bearer the sum of .... dollars as authorized by resolution No. .... as passed on the .... day of ...., 19.., creating special improvement district No. .... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ...., Montana.

This warrant (or bond) bears interest at the rate of ....% per annum from the day of registration of this warrant (or bond), as expressed herein,

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until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable semiannually on the first day of .... in each year and on the first day of .... in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to, *and is not a general obligation of the city.*

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ...., Montana, relating to the issuance thereof.

(SEAL)

Dated at ...., Montana, this .... day of ...., 19..., City of ...., Montana

By: .....,
Mayor

.....,
City Clerk

Registered at the office of the city treasurer of ...., Montana, this .... day of ...., 19...

.....
City Treasurer"

Section 5. Section 7-12-4222, MCA, is amended to read:

"7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the city or town council:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund. *However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then outstanding special improvement district bonds and warrants. If a tax is levied,*

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the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then outstanding special improvement district bonds and warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund."

Section 6. Section 7-12-4227, MCA, is amended to read:

"7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of *5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount* necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order *the amount of the* excess *that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants or interest thereon* or any part thereof transferred to the general fund of such city or town; or

(2) use *the* excess *that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants or interest thereon* or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town."

Approved April 9, 1981.

CHAPTER NO. 309

AN ACT TO AUTHORIZE PUBLIC AGENCIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH INDIAN TRIBES LOCATED IN MONTANA; AMENDING SECTIONS 53-30-204 AND 87-1-228, MCA; AND REPEALING SECTION 20-3-333, MCA.

WHEREAS, it is in the best interest of the State of Montana to establish a legal framework that will enable this state, its political subdivisions, and Indian tribes to achieve maximum harmony and facilitate cooperative efforts in the orderly administration of their respective governments; and

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WHEREAS, it is in the best interest of the state of Montana to establish a legal framework for viable agreements between itself and tribal governments located in Montana that are based on mutual consent and mutual benefit; and

WHEREAS, it is in the best interest of the state of Montana to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with tribal governments on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of public agencies and local communities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

Section 2. **Definitions.** As used in [this act], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

Section 3. **Authorization to enter agreement — general contents.** (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform. The agreement shall be authorized and approved by the governing body of each party to the agreement.

(2) The agreement shall set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

Section 4. **Detailed contents of agreement.** The agreement authorized by [section 3] shall specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

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(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) when an agreement involves law enforcement:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement; and

(9) any other necessary and proper matters.

Section 5. **Submission of agreement to attorney general.** (1) As a condition precedent to an agreement made under [this act] becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under [this act] unless he finds it is not in proper form or does not meet the requirements set forth in [this act] or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

Section 6. **Agreements by state agencies — requirements.** As a condition precedent to an agreement made under [this act] by a state agency becoming effective, it must have, in addition to the approval of the attorney general under [section 5], the approval of the governor. The criteria and time for the governor's approval shall be the same as that for the attorney general's approval as provided in [section 5].

Section 7. **Filing of agreement.** Within 10 days after approval by the attorney general and prior to commencement of its performance, an agreement made pursuant to [this act] must be filed with:

(1) the secretary of the United States department of the interior;

(2) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located;

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(3) the secretary of state; and

(4) the affected tribal government.

Section 8. **Revocation of agreement.** An agreement made pursuant to [this act] is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

Section 9. **Authorization to appropriate funds for purpose of agreement.** Any public agency entering into an agreement pursuant to [this act] may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

Section 10. **Specific limitations on agreements.** Nothing in [this act] may be construed to authorize an agreement that:

(1) enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either the state of Montana or tribal governments located in Montana;

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country;

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws; or

(4) provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Section 11. **Validity of existing agreements.** (1) Except as provided in subsection (2), [sections 1 through 10] do not effect the validity of any agreement entered into between a tribe and a public agency prior to July 1, 1981.

(2) However, any such agreement must satisfy the requirements of [sections 1 through 10] no later than July 1, 1983.

Section 12. Section 53-30-204, MCA, is amended to read:

"53-30-204. Cooperative agreements for services with governing body of Indian tribe. *(1)* The department of institutions may *enter into agreements* with the governing body of an Indian *tribe* within the state for residential and educational services:

(a) at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility maintained by the department for children who have

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been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of chapter 1; or

(b) at the Montana children's center for children who have been found by the tribal court to be dependent and neglected, subject to the provisions of [Title 80, chapter 21].

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of [sections 1 through 11]."

Section 13. Section 87-1-228, MCA, is amended to read:

"87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America, represented by Isaac I. Stephens, governor and superintendent of Indian affairs for the territory of Washington, and the chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the said Indians were given the exclusive right to fish and hunt on the Flathead Indian reservation and the privilege of hunting in their usual hunting grounds on large areas of Montana; and whereas, nonmembers of such tribes have the right to hunt and fish on Indian lands by sufferance of such tribes only; and whereas, it appears to be to the common advantage of the state and such Indian tribes that hunting and fishing regulations and privileges on other lands of the state and on Indian lands shall be uniform and that hunting and fishing on such Indian lands shall be in common with the public, now, therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) obtaining and establishing for the citizens of Montana, regularly licensed to hunt and fish in the state, the privileges of hunting and fishing on Indian lands on the Flathead Indian reservation;

(b) the conservation and protection of fish and game and fur-bearing animals on such Indian lands and on lands adjacent thereto;

(c) setting dates for the opening and closing of seasons for hunting and fishing on such lands for Indians and non-Indians alike, opening and closing of streams and land areas for hunting and fishing;

(d) doing what in its judgment is necessary by way of granting to such tribal Indians state permits to hunt and fish, to be issued without charge to such Indians;

(e) stocking streams and land areas of such Indian lands for the common benefit;

(f) policing such Indian lands for the protection of fish and game; and

(g) in general carrying out the purposes of this section.

(2) If any part of such agreement provides for the payment of money to the tribes, that part must first have the approval of the state legislature.

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(3) Any agreement entered into under subsection (1) must also satisfy the requirements of [sections 1 through 11]."

Section 14. **Repealer.** Section 20-3-333, MCA, is repealed.

Approved April 9, 1981.

CHAPTER NO. 310

AN ACT TO ELIMINATE THE LIABILITY OF RELATIVES OF APPLICANTS FOR PUBLIC ASSISTANCE; REPEALING SECTIONS 53-2-401 THROUGH 53-2-408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 53-2-401 through 53-2-408, MCA, are repealed.

Approved April 9, 1981.

CHAPTER NO. 311

AN ACT TO DEFINE THE TERM "APPROPRIATE PUBLIC EDUCATION" AS IT RELATES TO THE LAWS GOVERNING THE HABILITATION OF HANDICAPPED PERSONS IN THE STATE OF MONTANA; AMENDING SECTION 20-7-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does

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not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(4) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(5) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

(6) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(7) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(8) "Other health-impaired" means limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(9) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy.

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(10) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(11) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(12) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Approved April 9, 1981.

CHAPTER NO. 312

AN ACT TO AMEND SECTION 2-18-603, MCA, CONCERNING A PUBLIC EMPLOYEE'S OBSERVANCE OF A LEGAL HOLIDAY THAT FALLS ON THE EMPLOYEE'S NORMAL DAY OFF; TO PROVIDE MORE FLEXIBILITY IN SCHEDULING THE REQUIRED ALTERNATE DAY OFF; TO PROVIDE THAT SUCH EMPLOYEE MUST BE IN A PAY STATUS ON EITHER THE WORKING DAY IMMEDIATELY BEFORE OR IMMEDIATELY AFTER THE HOLIDAY; AND TO AUTHORIZE HOLIDAY PAY FOR PART-TIME EMPLOYEES ON A PRORATED BASIS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-603, MCA, is amended to read:

"2-18-603. Holidays — observance when falling on employee's day off. (1) Any full-time employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off *with pay* either on the day preceding *the holiday* or *on another* day following the holiday *in the same pay period or as scheduled by the employee and his supervisor*, whichever allows a day off in addition to the employee's regularly scheduled days off, *provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday.* Part-time employees receive *pay* for the holiday *on a prorated basis according to rules*

adopted by the department of administration or appropriate administrative officer under 2-18-604.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees."

Approved April 9, 1981.

CHAPTER NO. 313

AN ACT AMENDING SECTION 19-12-301, MCA, TO REQUIRE PAYMENT TO THE VOLUNTEER FIREFIGHTERS' COMPENSATION FUND FROM THE INSURANCE PREMIUM TAX BEFORE PAYMENT TO THE DISABILITY AND PENSION FUNDS OF THE FIRE DEPARTMENT RELIEF ASSOCIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-301, MCA, is amended to read:

"19-12-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-11-512, computed *before* the amounts provided for by 19-11-512 *are* deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter."

Approved April 9, 1981.

CHAPTER NO. 314

AN ACT TO PROVIDE PROCEDURES FOR THE ELECTORS OF LOCAL GOVERNMENTS TO CONSOLIDATE OR TRANSFER THE ADMINISTRATIVE AND FINANCIAL RESPONSIBILITY FOR SERVICES BETWEEN OR AMONG MUNICIPALITIES AND COUNTIES; AMENDING SECTION 7-11-230, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) The purpose of [sections 1 through 10] is to provide procedures for the electors of local governments to consolidate or transfer the administrative and financial responsibility for services between or among municipalities and counties.

(2) Nothing in [sections 1 through 10] is to be construed as in any way affecting the authority of local governments to enter into interlocal agreements or contracts as provided by law.

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Section 2. **Consolidation and transfer of services.** (1) A consolidation or transfer of services between or among municipalities may be proposed by a petition of the electors or on a recommendation of an interlocal cooperation commission as provided in 7-11-230.

(2) A petition or recommendation may propose to consolidate or transfer the administrative or financial responsibility or any administrative service, activity, or undertaking that any of the local governments included in the proposed consolidation or transfer are authorized by law to perform.

(3) Notwithstanding the requirements of 7-32-101, a petition or recommendation may propose to consolidate or transfer any law enforcement administrative service, activity, or undertaking between or among local governments.

Section 3. **Petition for consolidation or transfer of services.** (1) A petition or recommendation for the consolidation or transfer of the administrative and financial responsibility for services between or among local governments may be presented to the governing bodies of the local governments affected by the consolidation or transfer.

(2) A petition must be signed by at least 15% of the electors registered at the last general election of the local governments affected by the proposed consolidation or transfer.

(3) Whenever the consolidation or transfer of a service between a county and municipality is proposed by petition, the petition must be signed by at least 15% of the electors residing in each municipality included in the service consolidation or transfer and 15% of the electors residing in the remainder of the county.

(4) Upon determination of the sufficiency of the petition or upon receipt of a recommendation of the interlocal cooperation commission, the governing body of each of the local governments affected by the proposed consolidation or transfer shall call an election on the transfer or consolidation as provided in [section 7].

Section 4. **Service plan.** (1) The petitioners or the interlocal cooperation commission shall prepare a service plan governing the service or activity proposed to be transferred or consolidated.

(2) The plan shall provide:

(a) the nature of service or function to be consolidated or transferred;

(b) the effective date of the proposed consolidation or transfer;

(c) the responsibility for administration of the service to be consolidated or transferred, including the succession of the performance of duties currently performed by an elected officer if the elective status of an office is affected;

(d) the manner in which affected employees currently engaged in the performance of the function will be transferred, reassigned, or otherwise treated;

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(e) the manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed of;

(f) the method of financing, establishing, and maintaining a budget for the service; and

(g) other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.

(3) The service plan may include provisions for an administrator or joint board responsible for administering any joint or cooperative undertaking.

(4) The service plan shall be attached to the petition or to the interlocal cooperation commission's recommendation when it is submitted to the governing bodies affected by the service consolidation or transfer.

Section 5. **Availability of petition or recommendation and service plan.** (1) Sufficient copies of the petition or recommendation of the interlocal cooperation commission proposing a service consolidation or transfer and the service plan must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the proposal if such an election is to be held.

(2) Each local government affected by the proposal may distribute copies of the service plan to its residents.

Section 6. **Publication of summary and comparison.** (1) A summary of the recommendations contained in a petition or recommendation and the service plan proposing the consolidation or transfer of a service or activity must be published at least twice in a newspaper of general circulation in each local government affected by the proposal. The publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed methods of service delivery, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be shared by the affected local governments.

Section 7. **Election on service consolidation or transfer.** (1) The governing bodies of each local government affected by a proposed service consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held within 120 days of the date of the filing of the petition under [section 3] or within 120 days of the receipt by the local government of the interlocal cooperation commission recommendation. The special election may be held in conjunction with any other election. The county elections administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be shared by the affected local governments in proportionate shares as agreed to by the governing bodies of the local governments.

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Section 8. **General ballot requirements.** (1) The question of adopting a service consolidation or transfer shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

"Shall the plan for (consolidation or transfer) of (insert name of service or function) services proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert the names of local government units) be adopted?"

☐ YES.

☐ NO.

(2) If the question of adopting a service consolidation or transfer alters the elective status of any elected county official, it shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

☐ For adoption of (consolidation or transfer) of (insert name of service or function) proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert names of local government units) in which the office of (insert name of county office) is (insert description of changes in elective status).

☐ For existing service delivery arrangements.

(3) In any election involving the question of service consolidation or transfer, an affirmative vote of a simple majority of those voting on the question is required for adoption.

(4) If the electors disapprove the proposed service consolidation or transfer, each local government retains its existing service delivery method until changed or modified as provided by law.

(5) Except for nonsubstantive adjustments required to insure efficient and effective operations, a service consolidation or transfer effected by the procedures contained in [sections 1 through 10] may be amended or otherwise changed only in the same manner as required for its adoption.

Section 9. **Effect of adoption of service consolidation or transfer.** The adoption of a service consolidation or transfer does not affect the validity of any bond, debt, contract, collective bargaining agreement, obligation, or cause of action accrued or established by any affected local government prior to the consolidation or transfer.

Section 10. **Judicial review.** (1) Judicial review to determine the validity of the procedures used in adopting any service consolidation or transfer may be initiated by petition in district court of 10 or more registered electors of each local government affected by the consolidation or transfer brought within 60 days after the election adopting the service consolidation or transfer. If no petition is filed within that period, compliance with all the procedures required by [sections 3 through 10] and the validity of the manner in which the service consolidation or transfer was approved is conclusively presumed.

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(2) It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a service consolidation or transfer may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

Section 11. Section 7-11-230, MCA, is amended to read:

"7-11-230. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes the consolidation or transfer of the administrative and financial responsibilities for services between or among municipalities and counties, the commission shall make public its recommendation to the electorate of the local governments for referenda as provided for in [section 2].

(3) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(4) If the comprehensive plan includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of Montana, the commission shall make such recommendation or recommendations to the ensuing legislature."

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 9, 1981.

CHAPTER NO. 315

AN ACT TO RECONCILE CONFLICTS REGARDING MUNICIPAL ORDINANCE, RESOLUTION, AND INITIATIVE AND REFERENDUM PROCEDURES BY SPECIFYING THE APPLICABILITY OF TITLE 7, CHAPTER 5, PART 42.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Applicability of part.** (1) Except as provided in subsection (2), the provisions of this part govern the adoption procedures and effect of municipal ordinances, resolutions, and initiatives and referenda.

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(2) The following provisions apply to adoption procedures and effect of municipal ordinances, resolutions, and initiatives and referenda notwithstanding the provisions of this part:

(a) provisions of law not within Title 7, chapter 5, parts 1 and 42;

(b) sections of Title 7, chapter 5, part 1, that are in conflict with the provisions of this part which a municipality by ordinance adopts for governing its procedures or effects; and

(c) sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 5, part 42, and the provisions of section 1 apply to Title 7, chapter 5, part 42.

Approved April 9, 1981.

CHAPTER NO. 316

AN ACT TO INCREASE THE SALARY OF DISTRICT COURT REPORTERS AND TO CLARIFY THE METHOD OF PAYMENT OF SALARIES BY THE COUNTIES; AMENDING SECTION 3-5-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive an annual salary of not less than *$14,000* or more than *$20,000* and no other compensation except as provided in 3-5-604. The salary shall be set by the judge in the district in which the reporter works. It is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed. *Each county shall pay its portion of the salary based on its* proportion *of the total* number of civil and criminal actions commenced in the district *courts* in *the district* in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection.

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Approved April 10, 1981.

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CHAPTER NO. 317

AN ACT TO REMOVE THE AUTHORITY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DIRECT THE IMPOSITION OF STATEWIDE DEFICIENCY TAX LEVIES; REVISING THE METHOD OF FINANCING ELEMENTARY AND SECONDARY SCHOOLS; AMENDING SECTIONS 20-3-205, 20-9-303, 20-9-343, 20-9-344, 20-9-351, AND 20-9-352, MCA; REPEALING SECTION 20-9-345, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-303, MCA, is amended to read:

"20-9-303. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount — nonisolated school foundation program financing — special education funds. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures, as established herein, that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund. It shall be financed by:

(a) county equalization moneys; *and*

(b) state equalization aid.

(2) The dollar amount of the foundation program shall be 80% of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in 20-9-316 through 20-9-321. The foundation program of an elementary school having an ANB of nine or fewer pupils which is not approved as an isolated school under the provisions of 20-9-302 shall be 80% of the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title. The unexpended balance of the special education accounting budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education."

Section 2. Section 20-9-343, MCA, is amended to read:

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"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the earmarked revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 62 ½% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same earmarked revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation."

Section 3. Section 20-9-351, MCA, is amended to read:

"20-9-351. Funding of deficiency in state equalization aid. If the estimated state equalization level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of the *superintendent of public instruction to request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that would be sufficient to complete the funding of the foundation program of the elementary or secondary schools, or both, for the current biennium."*

Section 4. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general

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fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with *any biennial appropriation by the legislature for this purpose.*

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 9 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 9 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive account, according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 6 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive account, according to the provisions of subsections (3) and (4) of this section.

(3) *The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. Such appropriation shall provide* enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this *appropriation* shall be deposited to the earmarked revenue fund, permissive account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the *appropriation* is not sufficient to finance the deficiencies of the districts as determined according

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to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the permissive account *in the second year of the biennium may* be used to reduce the *appropriation* required for the next succeeding *biennium or may be transferred to the state equalization aid earmarked revenue fund if revenues in that fund are insufficient to meet foundation program requirements.*"

Section 5. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

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(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) quarterly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

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(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed."

Section 6. Section 20-9-344, MCA, is amended to read:

"20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution. (1) *The* moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of community affairs."

Section 7. **Repealer.** Section 20-9-345, MCA, is repealed.

Section 8. **Effective date.** This act is effective July 1, 1981.

Approved April 10, 1981.

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CHAPTER NO. 318

AN ACT PROVIDING FOR INDUSTRIAL DEVELOPMENT PROJECT FINANCING OF SMALL-SCALE HYDROELECTRIC FACILITIES; AMENDING SECTION 90-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(3) "Mortgage" means a mortgage or deed of trust or other security device.

(4) "Municipality" means any incorporated city or town in the state.

(5) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; *small-scale hydroelectric production facilities with a capacity of 50 megawatts or less;* and any combination of these projects."

Approved April 10, 1981.

CHAPTER NO. 319

AN ACT TO PROVIDE THAT A FARM MUTUAL INSURER OR AN INSURER OWNED OR CONTROLLED BY AN ASSOCIATION OR ORGANIZATION MAY REFUSE TO RENEW A CASUALTY OR LIABILITY POLICY FOR NONPAYMENT OF DUES IF PAYMENT OF DUES TO THE FARM MUTUAL, ASSOCIATION, OR ORGANIZATION IS A CONDITION TO OBTAINING OR CONTINUING THE INSURANCE; AMENDING SECTIONS 33-4-510 AND 33-18-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-510, MCA, is amended to read:

"33-4-510. Rates — filing — discrimination. *(1)* A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects

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of insurance covered for like perils under like policies and having substantially the same insuring, exposure, and underwriting characteristics.

(2) Notwithstanding any provision of subsection (1) or chapter 18, part 2, of this title, a farm mutual insurer transacting insurance under this chapter may refuse to renew a casualty or liability policy upon nonpayment of dues to the farm mutual insurer if payment of dues is a condition for obtaining or continuing such insurance."

Section 2. Section 33-18-102, MCA, is amended to read:

"33-18-102. Unfair methods or deceptive practices prohibited — exception. *(1)* No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance."

Approved April 10, 1981.

CHAPTER NO. 320

AN ACT TO REQUIRE THAT REPLACEMENT VALUE OF A MOTOR VEHICLE BE THE MEASURE OF DAMAGES IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **When replacement value to be allowed.** The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value shall be the actual replacement value of the motor vehicle rather than its "book value". Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 3, and the provisions of Title 27, chapter 1, part 3, apply to section 1.

Approved April 10, 1981.

CHAPTER NO. 321

AN ACT TO CLARIFY THE DISPOSITION OF FEES COLLECTED BY THE CLERK OF THE SUPREME COURT; AMENDING SECTION 3-2-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-404, MCA, is amended to read:

"3-2-404. Disposition of fees. *Except as otherwise provided by law, three-fourths* of all fees collected by the clerk must be paid into the

state treasury and shall be credited to the general fund, *and the remaining one-fourth of the fees* shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account."

Approved April 10, 1981.

CHAPTER NO. 322

AN ACT TO ELIMINATE REFERENCES TO THE BOARD OF ATHLETICS; REPEALING SECTIONS 2-15-1661, 23-3-101 THROUGH 23-3-103, AND 23-3-201 THROUGH 23-3-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Athletics and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Athletics be abolished.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 2-15-1661, 23-3-101 through 23-3-103, and 23-3-201 through 23-3-209, MCA, are repealed.

Section 2. **Effective date.** This act is effective July 1, 1981, except that for the purpose of winding up the affairs of the board the sections repealed have effect in accordance with 2-8-121.

Approved April 10, 1981.

CHAPTER NO. 323

AN ACT TO REESTABLISH THE BOARD OF VETERANS' AFFAIRS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Veterans' Affairs and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Veterans' Affairs be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of veterans' affairs is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

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(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

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(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1981.

CHAPTER NO. 324

AN ACT TO REESTABLISH THE BOARD OF PSYCHOLOGISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; ADDING TWO PUBLIC MEMBERS TO THE BOARD; AMENDING THE DEFINITION OF PSYCHOLOGY; DELETING CODE OF ETHICS REQUIREMENT FOR EXEMPTED PROFESSIONS; AMENDING THE DEFINITION OF PSYCHOLOGIST IN THE INSURANCE LAW; DELETING FELONY CONVICTION AS GROUNDS FOR DENIAL OR REVOCATION OF A LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1617, 33-22-111, 37-17-102, 37-17-104, AND 37-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Psychologists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

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WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Psychologists be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of psychologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

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(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

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(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: board of psychologists, department of professional and occupational licensing, created by 2-15-1617."

Section 3. Section 2-15-1617, MCA, is amended to read:

"**2-15-1617. Board of psychologists.** (1) There is a board of psychologists.

(2) The board consists of *five* members appointed by the governor. *One member must be a licensed psychologist in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public.* A member may not succeed himself but may be reappointed after 3 years following the termination of his previous appointment.

(3) *Members* shall serve *staggered 3-year terms.*"

Section 4. Section 33-22-111, MCA, is amended to read:

"**33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of

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choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist, or psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 5. Section 37-17-102, MCA, is amended to read:

"37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1617.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public for compensation or fee.

(5) "Practice of psychology" means the application, *while representing oneself to be a psychologist,* of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and behavior modification, including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation."

Section 6. Section 37-17-104, MCA, is amended to read:

"37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency or of

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other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization."

Section 7. Section 37-17-311, MCA, is amended to read:

"37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) A license applied for or issued under this chapter may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the code of ethics *adopted by the board.*

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board."

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1981.

CHAPTER NO. 325

AN ACT TO DELETE THE REQUIREMENT THAT SERVICES FOR MEDICAL AID AND HOSPITALIZATION FURNISHED BY A COUNTY TO INDIGENTS BE APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND PRIVATE ASSOCIATIONS; AMENDING SECTION 53-3-103, MCA.

WHEREAS, during its sunset review of medical licensing boards the Legislative Audit Committee noted that services for medical aid and hospitalization furnished by a county to indigents must be approved by the Department of Health and Environmental Sciences and private associations; and

WHEREAS, this gives the Department of Health and Environmental Sciences and private associations a veto power over a county's choice of services; and

WHEREAS, the law provides that services for medical aid and hospitalization provided by counties must be furnished by licensed practitioners.

THEREFORE, it is the intent of this act to delete the requirement that services for medical aid and hospitalization furnished indigents by the counties be approved by the Department of Health and Environmental Sciences and private associations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-103, MCA, is amended to read:

"53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial responsibility of the county commissioners and are payable from the county poor fund. The county commissioners shall make provisions for competent and

skilled medical or surgical services. "Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance—medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance or for persons who are eligible for medicaid in accordance with Title 53, chapter 6, part 1, or for persons who have the right or are entitled to medical aid and hospitalization from the federal government or any agency thereof.

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 which relate to medical benefits provided under Title XIX or XX of the Social Security Act apply to medical benefits provided for in this section."

Approved April 10, 1981.

CHAPTER NO. 326

AN ACT TO REESTABLISH THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS FOR SIX YEARS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of speech pathologists and audiologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

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(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

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(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

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(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1981.

CHAPTER NO. 327

AN ACT TO PROVIDE FOR INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND 46-18-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-502, MCA, is amended to read:

"46-18-502. Sentencing of persistent felony offender. (1) *Except as provided in subsection (2), a* persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) *or the first 10 years of a sentence imposed under subsection (2)* may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed."

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Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3) and (4) of 46-18-201, 46-18-221(3), and 46-18-502*(3)* do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

Approved April 10, 1981.

CHAPTER NO. 328

AN ACT TO SUBSTITUTE THE DEPARTMENT OF INSTITUTIONS FOR THE BOARD OF PARDONS WITH REGARD TO JURISDICTION OVER CERTAIN PRISONERS AND CONDUCT OF HEARINGS FOR CERTAIN PRISONERS; AMENDING SECTIONS 46-18-203 AND 46-23-422, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the *department of institutions* as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

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Section 2. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the *department of institutions*. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Approved April 10, 1981.

CHAPTER NO. 329

AN ACT AUTHORIZING A LOCAL GOVERNING BODY TO CONTRACT WITH A FINANCIAL INSTITUTION FOR A REPURCHASE AGREEMENT; PROVIDING FOR BID PROCEDURES; AMENDING SECTIONS 7-6-201 AND 7-6-206, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repurchase agreements — bidding.** (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish a repurchase agreement.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

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(4) The local governing body shall maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in its jurisdiction that are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration, security pledge requirements and range of funds to be invested.

Section 2. Section 7-6-201, MCA, is amended to read:

"7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206(3), 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, or savings and loan associations located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, or savings and loan association authorized above *or in a repurchase agreement as authorized in [section 1].*

(3) The treasurer or town clerk shall take from such bank, building and loan association, or savings and loan association such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, or savings and loan association until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk."

Section 3. Section 7-6-206, MCA, is amended to read:

"7-6-206. Time deposits — repurchase agreement. (1) Such public money not necessary for immediate use by such county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank or savings and loan association in the county, city, or town *or placed in repurchase agreements as authorized in [section 1],*

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and money placed in repurchase agreements is subject to subsections (2) and (3).

(2) When more than one bank or savings and loan association is available in any county for the *time or savings* deposit of such county funds or in any city or town for the *time or savings* deposit of such city or town funds, such funds may be distributed ratably among all of such banks and savings and loan associations qualifying therefor and substantially in proportion to the total property taxes paid during the preceding year in such county or the county in which such city or town is located and the corporation license taxes paid by each bank or savings and loan association willing to receive such time or savings deposits under the terms of this part.

(3) In lieu of a ratable distribution among banks and savings and loan associations within the county, city, or town, the local governing body may solicit bids without advertising from any bank or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public money not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from and deposit public money in such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this subsection shall be considered as meeting the requirements of subsection (2)."

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 6, part 2, and the provisions of Title 7, chapter 6, part 2, apply to section 1.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1981.

CHAPTER NO. 330

AN ACT TO REMOVE LIVESTOCK, POULTRY, AND THE UNPROCESSED PRODUCTS OF BOTH FROM CLASS SEVEN AND PLACE THEM IN CLASS SIX FOR PURPOSES OF PROPERTY TAXATION; AND PROVIDING AN APPLICABILITY AND IMMEDIATE EFFECTIVE DATE; AMENDING SECTIONS 15-6-136 AND 15-6-137, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) business inventories as defined in this section; *and*

(b) all unprocessed agricultural products on the farm or in storage except perishable fruits and vegetables in farm storage and owned by the producer.

(2) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade. The market value of business inventories, for property tax purposes, is the cost to the person subject to the inventory tax.

(3) Class six property is taxed at 4% of its market value."

Section 2. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by centrally assessed public utilities; and tools used in the repair and maintenance of this property; and

(d) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 ¼ miles.

(3) Class seven property is taxed at 8% of its market value."

Section 3. **Applicability.** This act applies to all taxes assessed after December 31, 1980.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1981.

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CHAPTER NO. 331

AN ACT TO CONTROL THE IMPORTATION AND KEEPING OF ALFALFA LEAF-CUTTING BEES AND TO PROVIDE FOR THE CERTIFICATION OF HEALTH OF ALFALFA LEAF-CUTTING BEES IMPORTED INTO OR KEPT IN MONTANA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Alfalfa Leaf-Cutting Bee Act".

Section 2. **Definitions.** As used in this [act], the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the department to determine whether they meet the required health standards.

(3) "Committee" means the alfalfa leaf-cutting bee advisory committee established in [section 4].

(4) "Department" means the department of agriculture established in 2-15-3001.

(5) "Equipment" means grooved boards, shelters, trays, incubators, cell removers, tumblers, and other apparatus used in rearing bees.

(6) "Nesting materials" means equipment, laminates, and other apparatus used in nesting bees.

(7) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(8) "Pathogen" means an organism, parasitic or otherwise, that causes disease in the alfalfa leaf-cutting bee.

(9) "Person" means an individual, association, partnership, or corporation.

(10) "Wild trap" means to trap bees on property not owned by the trapper.

Section 3. **Department responsibilities — adoption of rules.** (1) The department is responsible for the administration of this [act].

(2) The department shall by rule adopt minimum standards for the presence of pathogens and parasites in bees to be certified, imported, and possessed or controlled in the state of Montana.

(3) The department may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this [act].

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(4) In performing its duties under this [act], the department may:

(a) enter upon any public or private premises to inspect and sample bees or equipment that may be diseased or contaminated by parasites;

(b) quarantine any bees or equipment found to be infected or contaminated with pathogens at a level exceeding certification standards;

(c) order the disinfection or destruction of any bees or equipment that is infected or contaminated with parasites or pathogens and that does not meet certification standards.

(5) (a) Whenever the department has reasonable cause to believe a person is in possession of any diseased or parasitic bee or equipment or otherwise possesses any bee or equipment in violation of this [act] or rules adopted under [it], the department may order a quarantine for not more than 30 days of the suspected bees or equipment and may require any person in possession of such bees or equipment to hold them under specified conditions until notified otherwise in writing by the department.

(b) The department shall release any quarantine or order to hold bees upon a finding that the bees and equipment are disease-free and are possessed in compliance with this [act].

Section 4. **Advisory committee created — membership — compensation.** (1) There is an alfalfa leaf-cutting bee advisory committee consisting of five members appointed by the governor. The committee is attached to the department for administrative purposes only as prescribed in 2-15-121.

(2) The committee consists of:

(a) three members from the Montana alfalfa seed association;

(b) one member from the department; and

(c) one member from the cooperative extension service at Montana state university.

(3) A list of nominees for appointment to the committee may be submitted to the governor by the Montana alfalfa seed association, the department, and the cooperative extension service for the respective appointments from each entity.

(4) Appointments to the committee are for 3 years. Members may be reappointed at the discretion of the governor.

(5) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid from the earmarked revenue fund established in [section 10] compensation of $25 for each day in which he is engaged in the transaction of the official business of the committee, together with expenses as provided for in 2-18-501 through 2-18-503.

Section 5. **Duties of committee.** The committee shall advise the department with respect to any contemplated rulemaking. The committee shall meet to review the minimum standards adopted by the department at least once a year.

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Section 6. **Alfalfa leaf-cutting bees — inspection — certification — fees.** (1) No person may import, possess, or control alfalfa leaf-cutting bees in the state of Montana unless the bees are certified annually, as provided in this section.

(2) To certify bees, a person must file a completed application form provided by the department together with the certification fee prescribed by the department. The applicant must provide at least the following:

(a) name and place of residence;

(b) the general location and number of bees to be registered; and

(c) other relevant information as may be required by department rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified shall be selected by the department or its agent in a manner prescribed by the department. The sample shall be inspected for pathogens and parasites. If no pathogens or parasites in excess of certification standards are found, the sample shall be reported disease-free.

(4) When the department has in its possession a completed application form, a certification fee, and a report that the sample is disease-free, it may issue a certificate for the bees.

(5) The department shall specify the date by which any applicant must apply for recertification the following year. Applications for recertification received after the date specified shall be assessed a penalty equal to 10% of the applicable certification fee.

Section 7. **Bee laboratory authorized.** The department or its agent may develop and maintain a laboratory at Montana state university for the purpose of providing disease and parasite analytical services required to carry out the provisions of this [act]. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee-for-service basis.

Section 8. **Restrictions on importing bees and equipment.** (1) No bee may be imported into the state of Montana except under the provisions of this section.

(2) Prior to the importation of any bee, the importer must file a completed application form as required in subsection (2) of [section 6] and arrange an approximate date and time for inspection.

(3) Every imported bee must be shipped directly to the certification laboratory to be examined for infestation by parasites or pathogens. Prior to certification, each bee and associated transport equipment shall be quarantined at the laboratory.

(4) No bee may be imported except in loose cells or as adults. No bee may be imported in a drilled board, soda straw, or other equipment that prevents adequate inspection of the bee.

(5) A representative sample of the population of bees imported shall be inspected as the basis for certification.

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(6) No person may import used equipment or nesting materials.

(7) No bee may be certified unless all other requirements for certification provided in [section 6] are met.

Section 9. **Restrictions on the rearing, moving, and trapping of bees.** (1) No person may rear any bee in a nesting material from which samples of loose larval cells cannot readily be obtained.

(2) No person may move any quarantined bee or equipment except by special permit issued by the department.

(3) No person may wild trap or attempt to wild trap bees unless that person has been issued a permit for such activity in accordance with rules adopted by the department.

Section 10. **Fees to be set by rules — program to be self-supporting — earmarked account to be established.** (1) Fees authorized to be charged by this [act] shall be set by department rule. Such fees shall be designed to reimburse the department for costs incurred in providing services and carrying out its duties under this [act]. It is the intent of the legislature that department activities under this [act] be self-supporting.

(2) There is an earmarked revenue account known as the leaf-cutting bee account for use by the department. Fees collected under [this act] shall be paid into the leaf-cutting bee account.

Section 11. **Violation — penalty.** A person who imports, possesses, controls, moves, or wild traps or attempts to import, possess, control, move, or wild trap any bee or equipment in violation of this [act] or who interferes with or attempts to interfere with the efforts of the department or its agent to perform its duty under this [act] is guilty of a misdemeanor and upon conviction shall be fined not less than $300 or more than $500 for the first conviction and not less than $300 or more than $1,000 for each subsequent conviction.

Section 12. **Effective date.** This act is effective July 1, 1981.

Approved April 11, 1981.

CHAPTER NO. 332

AN ACT TO REQUIRE THE STATE ELECTRICAL BOARD TO ALLOW CERTAIN APPLICANTS TO TAKE LICENSE EXAMINATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Qualifications for licensing examination — when no discretion in board.** A person applying for a license as a master electrician, a journeyman electrician, or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

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(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 68, part 3, and the provisions of Title 37, chapter 68, apply to section 1.

Approved April 11, 1981.

CHAPTER NO. 333

AN ACT TO AUTHORIZE THE SALE BY PRESCRIPTION OF DIMETHYL SULFOXIDE (DMSO); AMENDING SECTION 50-31-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-311, MCA, is amended to read:

"50-31-311. New drug application required. (1) *Except as provided in [sections 2 through 8], no* person *may* sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or

(b) when not subject to the federal act, such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof and, prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(i) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(ii) a full list of the articles used as components of such drug;

(iii) a full statement of the composition of such drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(v) such samples of such drug and of the articles used as components thereof as the department may require; and

(vi) specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 180th day after the filing thereof, except that, if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

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(3) An order refusing to permit an application under this section to become effective may be revoked by the department."

Section 2. **DMSO defined.** As used in [sections 2 through 8], "DMSO" means dimethyl sulfoxide.

Section 3. **DMSO authorized.** The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

Section 4. **Hospital not to interfere.** A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

Section 5. **Health care facility nonliability.** No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

Section 6. **Physician not subject to disciplinary action.** A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

Section 7. **DMSO not endorsed.** [Sections 2 through 8] are not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

Section 8. **DMSO optional.** [Sections 2 through 8] do not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

Approved April 11, 1981.

CHAPTER NO. 334

AN ACT TO SIMPLIFY REPORTING REQUIREMENTS FOR CERTAIN TAXES BY ELIMINATING THE REQUIREMENT OF VERIFIED RETURNS AND REPORTS AND ELIMINATING THE REQUIREMENT OF FILING UPON COMMENCEMENT OF OPERATIONS FOR CERTAIN TAXES; AMENDING SECTIONS 15-35-104, 15-36-105, AND 15-38-105, MCA; AND REPEALING SECTIONS 15-36-111, 15-37-113, 15-37-208, 15-58-103, 15-59-103, AND 15-59-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The

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statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be *signed by the operator if the operator is an individual or* by an officer of the coal mine operator *if the operator is a business entity.* A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor."

Section 2. Section 15-36-105, MCA, is amended to read:

"15-36-105. Statement to accompany payment — records — collection of tax — refunds. (1) Each and every person must, within 60 days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by such person in the state during each month of such quarter and during the whole quarter, the average value thereof during each month, and the total value thereof for the whole quarter, together with the total amount due to the state as severance taxes for such quarter, and must within such 60 days deliver such statement and, except as provided in 15-36-121, pay to the department the amount of the taxes shown by such statement to be due to the state for the quarter for which such statement is made. Such statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the *statement.* Any such person engaged in carrying on such business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all thereof in one statement. The department shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department to examine each of such statements and compute the taxes thereon, and the amount so computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency shall be mailed by the department to such taxpayer. If the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability."

Section 3. Section 15-38-105, MCA, is amended to read:

"15-38-105. Report of gross yield from mines. A person who engages in or carries on the business of mining, extracting, or producing

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a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall on or before March 31 of each year make out a statement of gross yield of the mineral from each mine owned or worked by that person during the year preceding January 1 of the year in which the statement is made and the value thereof. This form shall be in the form prescribed by the department and shall be *signed* by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before March 31. The statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents."

Section 4. **Repealer.** Sections 15-36-111, 15-37-113, 15-37-208, 15-58-103, 15-59-103, and 15-59-202, MCA, are repealed.

Approved April 13, 1981.

CHAPTER NO. 335

AN ACT TO AMEND LAWS ON DISCRIMINATION IN HOUSING TO CONFORM TO FEDERAL REQUIREMENTS TO ENABLE THE STATE TO RECEIVE FEDERAL FUNDS BY EXPANDING THE DEFINITION OF UNFAIR HOUSING TO INCLUDE PRESALE TRANSACTIONS AND ADVERTISING; AMENDING SECTION 49-2-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

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(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; *or*

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of *subsection (1).*

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination."

Approved April 13, 1981.

CHAPTER NO. 336

AN ACT REQUIRING THAT A FISCAL NOTE AND STATEMENT ACCOMPANY CERTAIN BALLOT ISSUE PETITIONS AND BALLOTS; PERMITTING COURT REVIEW OF CERTAIN FISCAL STATEMENTS; AND PROVIDING FOR INCLUSION OF THE STATEMENT IN THE VOTER INFORMATION PAMPHLET; AMENDING SECTIONS 13-27-312, 13-27-315, 13-27-316, 13-27-401, AND 13-27-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general — preparation of statement and fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form *and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or*

agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition form is approved, the attorney general shall prepare and transmit to the secretary of state a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the measure. The statement prepared pursuant to this subsection, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(2) At the same time the statement of purpose is prepared, the attorney general shall prepare statements of the implication of a vote for or against a ballot issue *and a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue.* The statements of implication may be no more than 50 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue. The statements of implication *and fiscal statement* prepared pursuant to this section, unless altered by a court under 13-27-316, are the statements to be used on the petition and the ballot if the measure is placed on the ballot. The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(3) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, *and the fiscal statement if applicable* to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 2. Section 13-27-315, MCA, is amended to read:

"13-27-315. Statements by attorney general on issues referred by legislature. *(1) Upon receipt of a copy of a ballot form under 13-27-310(2) for an issue proposed by the legislature, the attorney general shall order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state. At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.*

(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing

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a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.

(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form."

Section 3. Section 13-27-316, MCA, is amended to read:

"13-27-316. Court review of attorney general statements. (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, *or the fiscal statement* formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, *or the fiscal statement* formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court."

Section 4. Section 13-27-401, MCA, is amended to read:

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"13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, *fiscal statement if applicable,* and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet shall also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order."

Section 5. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form. The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot. Unless otherwise provided in the legislative act or petition placing the issue on the ballot, the secretary of state shall list for each issue the number, the method of placement on the ballot, the title, the attorney general's explanatory statement if applicable, *the fiscal statement if applicable,* and the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot. The secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state shall include one of the following statements to identify why the issue has been placed on the ballot:

(1) an act referred by the legislature;

(2) an amendment to the constitution proposed by the legislature;

(3) an act of the legislature referred by referendum petition; or

(4) a law or constitutional amendment proposed by initiative petition."

Approved April 13, 1981.

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CHAPTER NO. 337

AN ACT TO INCREASE THE TAXABLE VALUATION REQUIREMENTS FOR ESTABLISHING A NEW ELEMENTARY SCHOOL DISTRICT; AMENDING SECTION 20-6-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-216, MCA, is amended to read:

"20-6-216. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is *$150,000* or more, except that when 50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be *$300,000* or more after the territory is detached; and

(3) the ANB in any of the existing districts is not reduced to less than 15."

Approved April 13, 1981.

CHAPTER NO. 338

AN ACT TO INCREASE THE AMOUNT OF REIMBURSEMENT AUTHORIZED THE GOVERNOR FOR OUT-OF-STATE TRAVEL; AMENDING SECTION 2-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $40 per day.

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(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $21 per day except as provided in subsection (2)(c), plus $2 for the morning meal, $3.50 for the midday meal, and $6.50 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized *the* actual *cost of lodging in addition to a meal allowance* not to exceed *$30* per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $40 per day plus $3 for the morning meal, $5 for the midday meal, and $8.50 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(c) All *other* elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas in the United States where the actual cost of lodging shall be reimbursed.

(3) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available."

Approved April 13, 1981.

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CHAPTER NO. 339

AN ACT TO AUTHORIZE LOANS FROM THE RURAL SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND TO FUND EMERGENCY REPAIRS IN A RURAL SPECIAL IMPROVEMENT DISTRICT; AMENDING SECTION 7-12-2183, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2183, MCA, is amended to read:

"**7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs.** *(1)* Whenever any rural special improvement district bond or warrant or any interest thereon shall become due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) Whenever any rural special improvement district maintenance fund does not have sufficient money to pay the cost of emergency repairs, the board of county commissioners by order or resolution may loan money from the revolving fund to such district maintenance fund. Such loan shall be repaid in annual installments in not more than 3 years. In no event may the loans interfere with the payments of bonds or warrants. The loan shall be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are not sufficient funds in the revolving fund to make the loans without interfering with the payment of bonds or warrants, then the loans may not be made."

Approved April 13, 1981.

CHAPTER NO. 340

AN ACT PERMITTING THE BOARD OF REGENTS TO DESIGNATE CERTAIN BUSINESS DAYS AS HOLIDAYS FOR ALL EMPLOYEES IN EXCHANGE FOR OTHER LEGAL HOLIDAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Designation of holidays by board of regents.** (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

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(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and his supervisor in addition to the employee's regularly scheduled days off provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

Approved April 13, 1981.

CHAPTER NO. 341

AN ACT TO DELETE CITIZENSHIP AS A QUALIFICATION FOR MEMBERSHIP ON A BANK BOARD OF DIRECTORS OR LICENSURE AS A PHARMACIST, OPTOMETRIST, VETERINARIAN, ACUPUNCTURIST, ACCOUNTANT, OR REAL ESTATE BROKER OR SALESMAN; AMENDING SECTIONS 32-1-322, 37-7-302, 37-10-302, 37-13-302, 37-18-302, 37-50-303, AND 37-51-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-322, MCA, is amended to read:

"32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than 3 or more than 11 in number, all of whom shall be stockholders of the bank and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any Tuesday up to and

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including the second Tuesday in April of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election."

Section 2. Section 37-7-302, MCA, is amended to read:

"37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination. On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity is $200.

(4) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy; but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter.

(6) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business.

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If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate."

Section 3. Section 37-10-302, MCA, is amended to read:

"37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age *or older* and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee of $25 shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee of $10 shall receive a certificate of registration signed by the members of the board."

Section 4. Section 37-13-302, MCA, is amended to read:

"37-13-302. Application for examination — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board, upon the forms and in the manner as prescribed by the board, at least 30 days before the date set by the board for the commencement of the examination. An examination fee of $50 shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

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(b) of good moral character, as determined by the board; and

(c) a graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board."

Section 5. Section 37-18-302, MCA, is amended to read:

"37-18-302. Application — qualification — fee. A *person* desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set annually by the board."

Section 6. Section 37-50-303, MCA, is amended to read:

"37-50-303. Public accountants — licensure — qualifications and requirements. Licensure as a public accountant is available to any person who:

(1) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state;

(2) is of good moral character;

(3) meets the requirements of education [and experience] set forth in 37-50-305 [and 37-50-306]; and

(4) complies with the qualifications and requirements in any one of the subsections of 37-50-304."

Section 7. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent

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to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and

(d) file an application for license with the department.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and

(iii) file an application for license with the department.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate."

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 13, 1981.

CHAPTER NO. 342

AN ACT TO ALLOW RURAL AND CITY SPECIAL IMPROVEMENT DISTRICTS TO EXTEND WITHIN OR OUTSIDE CITY BOUNDARIES, RESPECTIVELY, UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-12-2102 AND 7-12-4102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts upon petition. *(1)* Whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and

empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks, and such other special improvements as may be petitioned for.

(2) The board of county commissioners may upon compliance with subsection (1) order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may be included in the rural special improvement district only if 60% of those property owners approve of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions."

Section 2. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for building, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

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(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the construction or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water;

(f) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(g) maintain, preserve, and care for any and all of the improvements herein mentioned.

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(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may be included in the special improvement district only if 60% of those property owners approve of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Approved April 13, 1981.

CHAPTER NO. 343

AN ACT TO CONFORM THE PROVISIONS APPLICABLE TO PROTECTIVE SERVICES FOR DEVELOPMENTALLY DISABLED AND ELDERLY PERSONS TO MONTANA'S GUARDIANSHIP AND CONSERVATOR LAW; AMENDING SECTIONS 53-20-402 THROUGH 53-20-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-402, MCA, is amended to read:

"53-20-402. Legislative findings and directives. (1) In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective service in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;

(c) accept appointment by any district court as guardian, *conservator,* trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person. *However, this subsection does not relieve*

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the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 53-20-406."

Section 2. Section 53-20-403, MCA, is amended to read:

"53-20-403. Application for protective services. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this part and that the department is currently able to supply services to such person. A parent may name the department as guardian of the developmentally disabled person in his will. A parent may also name the department as guardian or trustee of the developmentally disabled person to assume such duties during the parents' lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward. *Any appointment of the department as guardian by the parent of a developmentally disabled person, either by will or by appointment during the parent's lifetime, must comply with and is governed by the requirements of Title 72, chapter 5, part 3.*

(2) Application for protective services under this part shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules of the department. The rules of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this part. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services."

Section 3. Section 53-20-404, MCA, is amended to read:

"53-20-404. Petition to make developmentally disabled person ward of department. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department shall file in the district court of the county in which the respondent resides or is physically present a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team composed of but not limited to a physician, a psychologist, and a social worker and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this part.

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(2) Upon the filing of such verified petition and team evaluation statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than 7 days or later than 14 days after the filing thereof. Such order shall appoint an attorney for the respondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order shall also advise the respondent of his right to appear at the hearing and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least 5 days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this part and whether it is in the best interest of the respondent that he be made a ward of the department and, if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) *If in addition to seeking authorization for the department to provide protective services the petition seeks to impose any legal disabilities on the ward, the petition shall be treated as a petition to create a guardianship or, if appropriate, a conservatorship and the provisions of Title 72, chapter 5, part 3, or, if appropriate, Title 72, chapter 5, part 4, apply.*

(5) Every proceeding under this part shall be civil in nature and shall be entitled "In the interest of ...., respondent" or "In the interest of ...., ward", as the case may be."

Section 4. Section 53-20-405, MCA, is amended to read:

"53-20-405. Protective and supportive services provided. (1) The department shall provide, in the manner set forth, for each of its wards those protective and supportive services which the department believes necessary to help the ward function to the extent of his capabilities as an independent, self-sufficient member of society. Services under this part may include but shall not be limited to assistance in obtaining:

(a) housing, clothing, and food;

(b) education and training for living in society and, where possible, for employment;

(c) employment;

(d) financial benefits to which the ward may be entitled;

(e) medical services and supplies;

(f) necessary legal services;

(g) marshaling, protection, and insurance of the ward's property;

(h) financial advice and services;

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(i) participation in cultural and recreational activities.

(2) Services under this part may also include but shall not be limited to assistance in preventing exploitation of the ward by others and in preventing injury to the ward and injury by the ward to others.

(3) The provision of protective services pursuant to this part does not create a guardianship relationship between the department and the developmentally disabled person unless a guardianship is created in accordance with the requirements of Title 72, chapter 5, part 3."

Section 5. Section 53-20-406, MCA, is amended to read:

"53-20-406. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled if the department is providing protective services for such person and if it shall appear to the court that the value of the assets of such person does not exceed $10,000 and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of *Title 72, chapter 5, part 4. Any appointment of the department as conservator of the estate of a developmentally disabled person made pursuant to this section is governed by and must comply with the requirements of Title 72, chapter 5, part 4."*

Section 6. **Department to compile list of qualified visitors.** The department shall compile and provide to each district court within the state a list of professional persons within the region where the district court is located who possess competencies in the evaluation and habilitation of persons with developmental disabilities and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses.

Section 7. **Protective services not creating guardianship or conservatorship.** The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

Section 8. **Codification instruction.** (1) Section 6 is intended to be codified as an integral part of Title 53, chapter 20, part 4, and the provisions of Title 53, chapter 20, part 4, apply to section 6.

(2) Section 7 is intended to be codified as an integral part of Title 53, chapter 5, part 2, and the provisions of Title 53, chapter 5, part 2, apply to section 7.

Approved April 13, 1981.

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CHAPTER NO. 344

AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE APPOINTMENT OF GUARDIANS FOR INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS; DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE FOR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312, 72-5-313, 72-5-315 THROUGH 72-5-317, AND 72-5-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in 72-5-321.

(2) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limited guardian.

Section 2. **Purpose and basis for guardianship.** Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

Section 3. Section 72-5-312, MCA, is amended to read:

"72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, *association, or nonprofit corporation or any of its members* may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private nonprofit corporation nominated by the incapacitated person, if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

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(e) any relative of the incapacitated person with whom he has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of such private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of such association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for him or paying benefits to him.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation who or which would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency."

Section 4. Section 72-5-313, MCA, is amended to read:

"72-5-313. Visitor in guardianship proceedings defined. A visitor is, with respect to guardianship proceedings, a person who is trained

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in law, nursing, social work, *medical care, mental health care, pastoral care, education, or rehabilitation* and is an officer, employee, or special appointee of the court with no personal interest in the proceedings."

Section 5. **Request for notice — interested person.** (1) Any interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian, if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings.

Section 6. **Contents of petition for appointment of guardian.** (1) The petition for appointment of a guardian shall contain:

(a) the name, residence, and mailing address of the petitioner, his relationship to the alleged incapacitated person, and his interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of his property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the

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limited guardian as provided in [section 7] and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian shall be stated with specificity.

Section 7. **Purposes for establishment of limited guardianship.** A petition seeking the establishment of a limited guardianship shall specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of his property that the petition shall explicitly specify and which may be no greater than the powers a full guardian can exercise.

Section 8. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of his own choice or the court may, in the interest of justice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. *Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity.*

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The visitor shall *also* interview the person *who appears to have caused the petition to be filed and the person who is nominated to serve as guardian* and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. *Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.*

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests."

Section 9. Section 72-5-316, MCA, is amended to read:

"72-5-316. Findings — order of appointment. *(1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in his personal freedom of action and decision is necessary to meet essential requirements for his physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if his financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under part 4 of this chapter and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order the court shall make specific findings of fact.*

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order shall specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order shall specify the particular powers and duties vested in the limited guardian, and the period for which the limited guardianship is created.

(3) No incapacitated person may be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for such limitations. The order shall state that all rights not specifically limited are retained by the incapacitated person."

Section 10. Section 72-5-317, MCA, is amended to read:

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"72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing his duties *or if there is no appointed guardian* and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. *The court may appoint either a full or a limited temporary guardian, depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian shall state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.*

(3) In case there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but in no case may he serve for longer than 6 months.

(4) A temporary *full* guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. *A temporary limited guardian is entitled to exercise such powers as are specifically granted to him in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian.* A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians."

Section 11. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. *(1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his possession and control, as required by the court or by court rule.*

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(2) A *full* guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a *full* guardian has the following powers and duties, except as *limited* by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A *full* guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, *a full guardian* may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) A *full* guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(f) If a conservator has been appointed, all of the ward's estate received by the *full* guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the *full* guardian must account to the conservator for funds expended.

(3) Any *full* guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. *A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian* is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon

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between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The *full* guardian *or limited guardian authorized to oversee such aspects of the incapacitated person's care* may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(4) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

Section 12. **Codification instruction.** Sections 1, 2, 5, 6, and 7 are intended to be codified as an integral part of Title 72, chapter 5, part 3, and the provisions of Title 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

Approved April 13, 1981.

CHAPTER NO. 345

AN ACT TO AUTHORIZE AND REQUIRE LICENSING BOARDS WITHIN THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING TO ESTABLISH FEE SCHEDULES THAT SET FEES REASONABLY COMMENSURATE WITH THE COSTS INCURRED IN ADMINISTERING THE VARIOUS PROGRAM AREAS WITHIN THEIR JURISDICTION; AND AMENDING SECTIONS 37-3-308, 37-3-313, 37-4-303, 37-4-306, 37-4-307, 37-4-403, 37-4-404, 37-4-406, 37-5-302, 37-5-307, 37-6-302 THROUGH 37-6-304, 37-7-302, 37-7-303, 37-7-321, 37-8-406, 37-8-407, 37-8-418, 37-8-431, 37-9-304, 37-10-302, 37-10-307, 37-11-307 THROUGH 37-11-309, 37-12-302, 37-12-305, 37-12-307, 37-12-323, 37-13-302 THROUGH 37-13-306, 37-14-303, 37-14-305, 37-15-307, 37-16-402, 37-16-405, 37-16-407, 37-17-307, 37-18-307, 37-18-403, 37-18-405, 37-19-301, 37-19-303, 37-19-304, 37-19-306, 37-19-403, 37-30-307, 37-30-404, 37-30-423, 37-30-424, 37-31-312, 37-31-322, 37-31-323, 37-32-305, 37-33-302, 37-33-305, 37-33-306, 37-40-303, 37-40-304, 37-51-311, 37-67-303, 37-67-315, AND 37-68-310, MCA.

WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

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THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisdiction.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Licensing boards to establish fees commensurate with costs.** All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

Section 2. Section 37-3-308, MCA, is amended to read:

"37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, *including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.*

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state."

Section 3. Section 37-3-313, MCA, is amended to read:

"37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee *prescribed by the board* for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be

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revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty *prescribed by the board.* The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."

Section 4. Section 37-4-303, MCA, is amended to read:

"37-4-303. Certificate to be registered in county where practicing — replacing lost certificate. (1) The certificate under this chapter entitles the holder to practice dentistry in any county in this state if the certificate is first filed for registration and registered in the office of the county clerk and recorder of the county in which the holder desires to practice. This chapter does not permit a holder of a certificate to practice in a county in this state unless the certificate has been first registered in the office of the clerk and recorder of the county. A holder of a certificate may practice in more than one or in any number of counties in this state on having the certificate registered in each of the counties in which the holder desires to practice.

(2) The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee *as prescribed by the board* shall be charged for issuing the certificate."

Section 5. Section 37-4-306, MCA, is amended to read:

"37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee *as prescribed by the board,* and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage

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in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter."

Section 6. Section 37-4-307, MCA, is amended to read:

"37-4-307. Annual renewal fee — absent registered dentist — default. (1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year or at the discretion of the board, he may be reinstated on the payment of a fee *prescribed by the board* for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty *prescribed by the board* before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

Section 7. Section 37-4-403, MCA, is amended to read:

"37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee *prescribed by the board*, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board."

Section 8. Section 37-4-404, MCA, is amended to read:

"37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee *prescribed by the board* and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

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(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) Except as provided in subsection (3) of this section, no license may be issued without an examination in theory to the applicant unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

(3) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment, may, on the payment of a fee *as prescribed by the board*, be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged.

(4) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state."

Section 9. Section 37-4-406, MCA, is amended to read:

"37-4-406. Annual renewal fee — revocation of license. (1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter."

Section 10. Section 37-5-302, MCA, is amended to read:

"37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at

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the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board, except as otherwise provided in 37-5-201.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license *shall be prescribed by the board.*"

Section 11. Section 37-5-307, MCA, is amended to read:

"**37-5-307. Renewal fee.** (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee *prescribed by the board* to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee *prescribed by the board* to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of *a maximum fee prescribed by the board* if the lapsed fees exceed *the maximum fee.*"

Section 12. Section 37-6-302, MCA, is amended to read:

"**37-6-302. Qualifications for licensure — exemptions from examination.** (1) Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the state board of podiatry examiners and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board and have successfully passed the examination.

(2) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the

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practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of *a fee prescribed by the board* to the department.

(3) A license may be granted, at the discretion of the board and upon payment of *a fee prescribed by the board* to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board."

Section 13. Section 37-6-303, MCA, is amended to read:

"37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license are a general average of 75% in all the subjects involved and not less than 50% in any one subject.

(2) An examination and license fee *prescribed by the board* shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination."

Section 14. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — annual renewal fee — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof or any other designation or title, except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot" so as not to mislead the public with respect to his right to treat other portions of the body.

(2) Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record.

(3) A license renewal fee set by the board shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of *an additional fee prescribed by the board.*

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(4) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 15. Section 37-7-302, MCA, is amended to read:

"37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination. On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity *shall be prescribed by the board.*

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy; but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter.

(6) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate."

Section 16. Section 37-7-303, MCA, is amended to read:

"37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee *prescribed by the board.* A default in the payment of a renewal fee for a period of 30 days after the date it is due increases the renewal fee *as prescribed by the board.* It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

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(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter."

Section 17. Section 37-7-321, MCA, is amended to read:

"37-7-321. Store license — certified pharmacy license — suspension or revocation. (1) The department shall, on application on forms prescribed by the board and on the payment of an annual fee *prescribed by the board*, license stores other than pharmacies in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled or nonmedical articles usually sold by vendors.

(2) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee *prescribed by the board*, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee *as prescribed by the board*. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter;

(ii) a felony; or

(iii) a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059);

(d) when the person to whom the license is granted is a natural person whose pharmacist or intern license has been revoked; or

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(e) when the store or pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(4) Before a license can be revoked, the holder is entitled to a hearing by the board."

Section 18. Section 37-8-406, MCA, is amended to read:

"37-8-406. Professional nursing — examination — fee. An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee *prescribed by the board* at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or if the examination is not taken, subject to deduction by the department of *an amount prescribed by the board* per subject of the examination which shall be retained by the department."

Section 19. Section 37-8-407, MCA, is amended to read:

"37-8-407. Reciprocity — professional nursing. (1) The board—professional nursing administration may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee *prescribed by the board* at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of *an amount prescribed by the board* to be retained by the department.

(2) An applicant may, pending licensure as a professional nurse under subsection (1) of this section, practice professional nursing as an employee of a health care agency for a period not longer than 3 months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse and an affidavit by the employer where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information deemed by the board necessary for the statement.

(3) Subsection (2) does not permit the nurse to practice for more than a 3-month period or in any event after being notified by the board through the department that the application for a license has been denied or in all cases after being notified by the board through the department to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant."

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Section 20. Section 37-8-418, MCA, is amended to read:

"37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee *prescribed by the board* to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of *an amount prescribed by the board* to be retained by the department."

Section 21. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee *prescribed by the board* before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter."

Section 22. Section 37-9-304, MCA, is amended to read:

"37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall be required to pay a fee *prescribed by the board* at the time of application.

(2) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. A license shall expire on December 31 in the year for which it is issued and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount *fixed by the board*. An inactive registration shall expire on December 31 in the year for

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which it is issued and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be *fixed by the board.*"

Section 23. Section 37-10-302, MCA, is amended to read:

"37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age, a citizen of the United States, and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee *prescribed by the board* shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee *prescribed by the board* shall receive a certificate of registration signed by the members of the board."

Section 24. Section 37-10-307, MCA, is amended to read:

"37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department a renewal fee *prescribed by the board* in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having

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been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty *prescribed by the board.*"

Section 25. Section 37-11-307, MCA, is amended to read:

"37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state. However, the board may require a written, oral, or practical examination."

Section 26. Section 37-11-308, MCA, is amended to read:

"37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee."

Section 27. Section 37-11-309, MCA, is amended to read:

"37-11-309. Temporary license. (1) On payment to the department of a fee which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) On the submission of a written application on forms provided by it, the department shall issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This temporary license is available to an applicant only with respect to his first application for a license under 37-11-307, or to a foreign-trained physical therapist, and the license expires when the board makes a final determination with respect to the application."

Section 28. Section 37-12-302, MCA, is amended to read:

"37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic

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years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee *prescribed by the board*. Like fees shall be paid for a subsequent examination and application."

Section 29. Section 37-12-305, MCA, is amended to read:

"37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee *prescribed by the board* as herein provided."

Section 30. Section 37-12-307, MCA, is amended to read:

"37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors consisting of monitored classroom time conducted by instructors from accredited colleges of chiropractic in subjects designated and approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the 6 months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs."

Section 31. Section 37-12-323, MCA, is amended to read:

"37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee *prescribed by the board* for the restoration."

Section 32. Section 37-13-302, MCA, is amended to read:

"37-13-302. Application for examination — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board, upon the forms and in the manner as prescribed by the board, at least 30 days

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before the date set by the board for the commencement of the examination. An examination fee *prescribed by the board* shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) a citizen of the United States or has filed a properly executed declaration of intention to become a citizen of the United States;

(c) of good moral character, as determined by the board; and

(d) a graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board."

Section 33. Section 37-13-303, MCA, is amended to read:

"37-13-303. Examination — scope — retention and inspection of examination papers — reexamination. (1) Any applicant meeting the requirements of this chapter shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, insofar as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or their equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained 2 years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant, or by some person appointed by the applicant to examine them or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee *prescribed by the board* for each examination."

Section 34. Section 37-13-304, MCA, is amended to read:

"37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee *prescribed by the board*, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board."

Section 35. Section 37-13-305, MCA, is amended to read:

"37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any

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acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee *prescribed by the board* as herein provided."

Section 36. Section 37-13-306, MCA, is amended to read:

"37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed without examination upon request of the licensee. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee *prescribed by the board.* The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license.

(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee *prescribed by the board*, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee *prescribed by the board* for each year following the cancelling of the license.

(6) Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status."

Section 37. Section 37-14-303, MCA, is amended to read:

"37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

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(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination."

Section 38. Section 37-14-305, MCA, is amended to read:

"37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter."

Section 39. Section 37-15-307, MCA, is amended to read:

"37-15-307. Application and examination fee — license fee. The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be determined by the board each year based on costs and predicted expenditures."

Section 40. Section 37-16-402, MCA, is amended to read:

"37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee *prescribed by the board* and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the 3 years preceding the date of application;

(3) is free of contagious or infectious disease."

Section 41. Section 37-16-405, MCA, is amended to read:

"37-16-405. Temporary license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the examination under 37-16-403 may apply to the department for a temporary license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee *prescribed by the board*, the department shall issue a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending 30 days after the conclusion of the next examination given after the date of issue.

(3) No temporary license may be issued by the department unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license may not be renewed except for a good cause shown to the satisfaction of the board.

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(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may authorize the department to renew the temporary license for a period ending 30 days after the results of the next examination given after the dates of renewal are announced. In no event may more than two renewals be permitted. The fee for renewal *shall be prescribed by the board.*"

Section 42. Section 37-16-407, MCA, is amended to read:

"**37-16-407. Renewal of license — fee.** A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is not required to submit to an examination as a condition of renewal for a 3-year period after suspension."

Section 43. Section 37-17-307, MCA, is amended to read:

"**37-17-307. Fees — deposit of fees.** (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6)."

Section 44. Section 37-18-307, MCA, is amended to read:

"**37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.** (1) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the 6 months preceding July 1 shall be granted renewals without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

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(2) Failure of a person licensed to procure a certificate of registration before July 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements of all licensees recited above. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department."

Section 45. Section 37-18-403, MCA, is amended to read:

"37-18-403. Licensure without examination. A person who can produce satisfactory evidence that he has been employed as a veterinary technician in the office of a regularly licensed veterinarian in the state of Montana for 2 or more years prior to March 25, 1975, may, upon payment of a fee *prescribed by the board*, be granted a certificate to practice by the board of veterinarians; provided that if the board in its discretion finds that animal health and the public interest so require, the board may require the applicant to pass a practical examination in veterinary technology. A certificate must be secured before such person may continue practice as a veterinary technician."

Section 46. Section 37-18-405, MCA, is amended to read:

"37-18-405. Renewal — board to be kept informed of employer. (1) Each licensed veterinary technician shall annually on or before July 1 procure from the board a certificate of annual registration. The fee for annual registration shall be fixed by the board. Failure of a licensee to procure a certificate of registration on or before July 1 shall constitute a forfeiture of the license.

(2) Each licensed veterinary technician shall keep the board informed of his address, the name and address of the licensed veterinarian or of the state department which is his employer, and such other information as the board may by rule require."

Section 47. Section 37-19-301, MCA, is amended to read:

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"37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963."

Section 48. Section 37-19-303, MCA, is amended to read:

"37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary."

Section 49. Section 37-19-304, MCA, is amended to read:

"37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination, upon payment of a license fee *prescribed by the board*, shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license."

Section 50. Section 37-19-306, MCA, is amended to read:

"37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty *prescribed by the board.*"

Section 51. Section 37-19-403, MCA, is amended to read:

"37-19-403. Power of board to set standards — inspection. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules are complied with. Such inspection or inspections shall be made at the discretion of the board and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board."

Section 52. Section 37-30-307, MCA, is amended to read:

"37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card *shall be prescribed by the board.*

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(2) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate *shall be prescribed by the board.*

(3) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year, the barber shall on renewal of the certificate of registration pay a penalty *prescribed by the board* in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(4) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a 9-month course in a reputable barber college are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(5) No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state."

Section 53. Section 37-30-404, MCA, is amended to read:

"37-30-404. Barber schools — operator — license fee — patrons. (1) A barber school or college operating in this state must have in charge a person who has had 10 years' continuous experience as a barber.

(2) The owner of the school or college shall first secure a permit to operate granted by the board and issued by the department, on payment of an annual license fee *prescribed by the board*, and shall keep the permit prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $2,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) Barber schools or barber colleges may not charge patrons for barbering services and materials rendered.

(5) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(6) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board."

Section 54. Section 37-30-423, MCA, is amended to read:

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"37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee *prescribed by the board* for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses expire on July 1 of each year following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty *prescribed by the board*, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty *prescribed by the board.*"

Section 55. Section 37-30-424, MCA, is amended to read:

"37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee *prescribed by the board* to the department or a 10-day license fee *prescribed by the board* and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation."

Section 56. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors who are licensed to practice under this chapter, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment must pay an initial inspection fee *prescribed by the board.*

(3) The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable."

Section 57. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next

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year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a teacher's license but not actively engaged either full-time or part-time in teaching cosmetology during the preceding year may renew the license by paying the required fee. A person holding a teacher's license but not actively engaged in teaching cosmetology either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a teacher's license and not actively engaged either full-time or part-time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee *prescribed by the board* shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline. The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration."

Section 58. Section 37-31-323, MCA, is amended to read:

"37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department *in* amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology."

Section 59. Section 37-32-305, MCA, is amended to read:

"37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall *be* set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

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(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee *prescribed by the board* to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board in administration of the chapter."

Section 60. Section 37-33-302, MCA, is amended to read:

"37-33-302. Application — qualifications — fee. (1) A person wishing to engage in the occupation of a massage therapist in this state shall make application to the department on the form and in the manner prescribed by the board at least 15 days prior to a meeting of the board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage therapy certifying not less than 1,000 hours of study satisfactory to the school. Application shall be in writing and sworn to by some officer authorized to administer oaths and shall recite the history of the applicant's educational qualifications, how long he has studied massage therapy, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage therapy, accompanying this with proof by a diploma or certificate and with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee *prescribed by the board* which shall accompany the application. An applicant failing to pass the requirements is entitled, within 6 months, to a reexamination on payment of an additional fee *prescribed by the board* but on a third failure may not reapply for a period of 1 year."

Section 61. Section 37-33-305, MCA, is amended to read:

"37-33-305. Admission of licensees from other states. Upon payment of the fee *prescribed by the board* as herein provided, persons licensed to engage in the occupation of massage therapist under the laws of any other state having equal requirements to this chapter may, in the discretion of the board, be issued a license to engage in the occupation of massage therapist in this state without examination."

Section 62. Section 37-33-306, MCA, is amended to read:

"37-33-306. Renewal. (1) A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee as set by the board.

(2) Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee in an amount *prescribed by the board.* Failure to renew within 30 days following December 31 shall be cause for suspension or revocation of the license."

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Section 63. Section 37-40-303, MCA, is amended to read:

"37-40-303. Licensing sanitarians from other states. The department shall issue a license without examination to a person who applies to the department, pays a fee *prescribed by the board*, and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state."

Section 64. Section 37-40-304, MCA, is amended to read:

"37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

Section 65. Section 37-51-311, MCA, is amended to read:

"37-51-311. Fees — deposit of fees. (1) The fees *prescribed by the board* shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge *an* annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not file a bond with the department as provided in 37-51-304.

(3) The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased."

Section 66. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is as prescribed by the board *and* shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training

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certificate from some other state, the application fee is as prescribed by the board which includes cost of transfer of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on application and payment of a fee as prescribed by the board issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 67. Section 37-67-315, MCA, is amended to read:

"37-67-315. Annual renewal — fee — verification of competency. (1) Certificates of registration expire on December 31 of the appropriate year and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December of the appropriate year by the payment of a fee as set by the board for either a professional engineer or land surveyor, or both.

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(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially in the month of December of the appropriate year does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional renewal period shall be considered a new applicant and is required to submit a new application."

Section 68. Section 37-68-310, MCA, is amended to read:

"37-68-310. Annual renewal. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee *prescribed by the board* shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses."

Section 69. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 1.

Approved April 13, 1981.

CHAPTER NO. 346

AN ACT TO AMEND SECTION 18-6-101, MCA, TO PERMIT THE DEPOSIT OF PROCEEDS RECEIVED FROM THE SALE OF PERSONAL PROPERTY IN A REVOLVING FUND OR DESIGNATED SUBFUND ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-6-101, MCA, is amended to read:

"18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

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(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in a revolving fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate revolving fund or designated subfund account."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 13, 1981.

CHAPTER NO. 347

AN ACT TO PROVIDE THAT THE TRUSTEES OF A SCHOOL DISTRICT OPERATING AN ELEMENTARY SCHOOL OF LESS THAN 10 ANB OR A HIGH SCHOOL OF LESS THAN 25 ANB FOR 2 CONSECUTIVE YEARS SHALL APPLY TO HAVE THE SCHOOL CLASSIFIED AS AN ISOLATED SCHOOL; AMENDING SECTIONS 20-9-302 AND 20-9-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-302, MCA, is amended to read:

"**20-9-302. School isolation.** (1) The trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB *for 2 consecutive years* shall apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by May 1 *of the second consecutive* year *that enrollment falls below the amount specified in this subsection.* Such application shall include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before May 15. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application

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because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received."

Section 2. Section 20-9-303, MCA, is amended to read:

"20-9-303. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount — nonisolated school foundation program financing — special education funds. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures, as established herein, that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund. It shall be financed by:

(a) county equalization moneys;

(b) state equalization aid; and

(c) when required, moneys from an additional state levy for a state deficiency.

(2) The dollar amount of the foundation program shall be 80% of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in 20-9-316 through 20-9-321. The foundation program of an elementary school having an ANB of nine or fewer pupils *for 2 consecutive years* which is not approved as an isolated school under the provisions of 20-9-302 shall be 80% of the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title. The unexpended balance of the special education accounting budget shall

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carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education."

Approved April 13, 1981.

CHAPTER NO. 348

AN ACT TO RAISE THE MAXIMUM JURISDICTIONAL AMOUNT IN CIVIL CASES IN JUSTICES' COURTS TO $3,500; AMENDING SECTIONS 3-10-301 AND 25-31-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed *$3,500*, exclusive of court costs;

(b) in actions for damages not exceeding *$3,500*, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding *$3,500*, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed *$3,500*;

(e) in actions for a fine, penalty, or forfeiture not exceeding *$3,500*, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed *$3,500*, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed *$3,500*, exclusive of court costs.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 25-31-506, MCA, is amended to read:

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"25-31-506. Compulsory counterclaim. If the defendant omits to set up a counterclaim in the cases mentioned in 25-31-505, neither he nor his assignee can afterward maintain an action against the plaintiff therefor. If the counterclaim exceeds *$3,500*, he need not set it up."

Approved April 13, 1981.

CHAPTER NO. 349

AN ACT TO REPEAL SECTION 2-15-1703, MCA, WHICH CREATED THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF LABOR AND INDUSTRY, AND SECTION 39-51-306, MCA, WHICH CREATED CERTAIN BUREAUS WITHIN THE DIVISION; AND TO GENERALLY REVISE LAWS TO CONFORM TO THE REPEALER; AMENDING SECTIONS 39-51-307, 39-51-503, AND 39-51-2410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Division of employment security and certain bureaus — name change.** The division of employment security and its bureaus created in 2-15-1703 and 39-51-306 are abolished. Their functions are continued in the department of labor and industry provided for in Title 2, chapter 15, part 17. Unless inconsistent with this act, any reference in the MCA to "division of employment security", "division" (of employment security), or any bureau of the division of employment security, including "Montana state employment service bureau" or "unemployment insurance bureau", is changed to "department of labor and industry" or "department" (of labor and industry). Consistent with the intent of this section and without changing the meaning, the code commissioner shall remove any redundancies caused by such name changes.

Section 2. Section 39-51-307, MCA, is amended to read:

"39-51-307. Department to create employment service. (1) The *department* shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended.

(2) The *department* shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

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(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The *department* is hereby designated and constituted the agency of this state for the purpose of said act.

(4) For the purpose of establishing and maintaining free public employment offices, the *department* is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the *department* may accept money, services, or quarters as a contribution to the employment service account."

Section 3. Section 39-51-503, MCA, is amended to read:

"39-51-503. Agreements with railroad retirement board. The *department* is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the *department* relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the *department* from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407."

Section 4. Section 39-51-2410, MCA, is amended to read:

"39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the *department* when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board. The *department* shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the *department* or at the *department's* request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the *commissioner of labor and industry or his* designee and such service shall be deemed completed service on all parties, but there shall be left with the party so served as

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many copies of the petition as there are defendants and the *department* shall forthwith mail one such copy to each such defendant.

(3) With its answer, the *department* shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the *department* seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the *department* shall enter an order in accordance with such determination."

Section 5. **Repealer.** Sections 2-15-1703 and 39-51-306, MCA, are repealed.

Approved April 13, 1981.

CHAPTER NO. 350

AN ACT TO EXTEND THE CURRENT 5-YEAR PROPERTY REVALUATION CYCLE FOR AN ADDITIONAL 2 YEARS AND TO PROVIDE FOR THE VALIDITY OF ASSESSMENTS AND TAXES DURING THIS EXTENDED CYCLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** It is the policy of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

Section 2. **Purpose.** (1) It is the purpose of this act to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of

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15-7-111 through 15-7-114 in a manner that implements the policy provided for in section 1.

(2) This act serves to extend the current cycle only. It is intended that after the extended cycle, the department will implement the provisions of 15-7-111 through 15-7-114 and return to the 5-year cycle.

Section 3. **Extension of current revaluation cycle.** (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1983, and representing a 5-year period commencing January 1, 1979, is hereby extended for an additional 2 years, ending December 31, 1985. The new values determined during this period shall be placed on the tax rolls commencing January 1, 1986.

(2) It is not necessary for the department of revenue to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1986.

(3) The extension provided for in subsection (1) does not affect the validity of any assessments made or to be made or any taxes levied or to be levied during the period January 1, 1979, to December 31, 1985.

Approved April 13, 1981.

CHAPTER NO. 351

AN ACT TO INCREASE THE PERMISSIVE COUNTY ROAD LEVY; AMENDING SECTION 7-14-2501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2501, MCA, is amended to read:

"7-14-2501. General road tax authorized. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than *15* mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than *18* mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

(3) All money collected under this section shall belong to the county road fund."

Approved April 13, 1981.

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CHAPTER NO. 352

AN ACT TO REVISE THE MILEAGE LIMITATIONS ON TELEPHONE COMMUNICATIONS EQUIPMENT THAT QUALIFIES FOR CLASS SEVEN TAXATION; AMENDING SECTION 15-6-137, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) livestock, poultry, and unprocessed products of both;

(b) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(c) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(d) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by centrally assessed public utilities; and tools used in the repair and maintenance of this property; and

(e) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than *1 mile.*

(3) Class seven property is taxed at 8% of its market value."

Approved April 13, 1981.

CHAPTER NO. 353

AN ACT TO PROVIDE THAT ALL INTERIM STUDIES BE CONDUCTED BY SUBCOMMITTEES OF THE STANDING COMMITTEES; AMENDING SECTIONS 5-5-202, 5-5-211, AND 5-5-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim activities of committees. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue to sit as such committees *and may act through their joint subcommittees.*"

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Section 2. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of joint subcommittees. *Senate joint* subcommittee members shall be appointed by the *committee on committees. House joint subcommittee members shall be appointed by the speaker.* No legislator *may* serve on more than two interim joint subcommittees. The composition of each subcommittee shall be as follows:

(1) four members of the house, no more than two of whom may be of one political party; and

(2) four members of the senate, no more than two of whom may be of one political party."

Section 3. Section 5-5-217, MCA, is amended to read:

"5-5-217. Selection and assignment of interim studies. (1) Immediately following adjournment sine die, the legislative council shall prepare a list of study requests adopted. A copy of the list shall be distributed to each legislator with a request that the legislator rank the study requests in the order of importance he ascribes to them. The lists, with the priorities assigned, shall be returned to the legislative council.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of *subcommittees* to be *assigned studies.*

(3) The legislative council shall inform the *committee on committees and speaker of the house* of those studies that have been selected *and to which joint subcommittee each study has been assigned. The committee on committees and speaker* shall then proceed under 5-5-211 to appoint the subcommittees."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

CHAPTER NO. 354

AN ACT TO ESTABLISH A MONTANA TUMOR REGISTRY AND TO REQUIRE REPORTING BY HOSPITALS OF INFORMATION ON PATIENTS WITH TUMORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Tumor Registry Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana.

Section 3. **Duty to report tumors.** A hospital that provides to any person medical services relating to a tumor designated as reportable by the department shall make available to the department all medical and personal information relevant to that person's treatment on forms provided by the department.

Section 4. **Confidentiality.** Information received by the department pursuant to [this act] may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of 50-16-311 are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state.

Section 5. **Tumor registry.** The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to [section 3].

Section 6. **Rules.** The department may adopt rules implementing [this act], including:

(1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 14, 1981.

CHAPTER NO. 355

AN ACT TO UPDATE THE PROVISIONS RELATING TO FUNDING OF LIBRARY FEDERATIONS TO REFLECT CURRENT PRACTICE; REPEALING SECTION 22-1-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 22-1-411, MCA, is repealed.

Approved April 14, 1981.

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CHAPTER NO. 356

AN ACT TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO AWARD LOANS FROM THE ALTERNATIVE ENERGY RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT FOR RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION OF ALTERNATIVE RENEWABLE ENERGY SOURCES; AND TO ALLOW GRANTS FOR COMMERCIALIZATION OF SUCH SOURCES; AMENDING SECTIONS 90-4-101 AND 90-4-104 THROUGH 90-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-101, MCA, is amended to read:

"**90-4-101. Purpose.** The purposes of this part are to stimulate research, development, demonstration, *and commercialization* of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and to provide for the funding and administration of such research. *Furthermore it is the purpose of this part to allow the department to make loans through financial institutions in Montana for commercialization of alternative renewable energy.*"

Section 2. Section 90-4-104, MCA, is amended to read:

"**90-4-104. General powers of department.** The department may:

(1) employ a staff adequate to administer this part;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications and granting of funds;

(4) adopt rules governing applications for and administration and awarding of loans;

(5) consider applications and award grants *or loans*, subject to the availability of funds and to the appropriation of such funds by the legislature from the alternative energy research development and demonstration funds for projects that will further the purposes of this part;

(6) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy matters. The appointment of any such advisory committee shall be in keeping with 2-15-122."

Section 3. Section 90-4-105, MCA, is amended to read:

"90-4-105. Applications for grants or loans. Any person may apply for a grant *or loan* to enable him to research, develop, demonstrate, *or commercialize* alternative renewable energy sources. The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements."

Section 4. Section 90-4-106, MCA, is amended to read:

"90-4-106. Criteria for grant awards. The department may award grants *or loans* to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period not exceeding 1 year, and the department may not commit itself to spending funds anticipated to be available more than 1 year after the grant period begins. The department may give an applicant a statement of intent to renew its support of his work, subject to the availability of funds and such other conditions as the department may express.

(2) The department may give preference to projects which are also supported by *funding* from the federal government or other persons provided the *projects* are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy research development and demonstration account for matching moneys in order to support more substantial research *or commercialization.*

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants *or loans* to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public and shall not become the private property of or under the exclusive control of any one company or person.

(6) The department is under no requirement to expend or commit available alternative energy research, development, and demonstration funds when in its judgment such expenditures or commitments would be unproductive."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

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CHAPTER NO. 357

AN ACT GENERALLY REVISING AND CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE; PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED BY FIRST-CLASS MAIL; PROVIDING FOR ACTION ON AN APPLICATION IF OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT APPROPRIATION ACCOUNT; PROVIDING A PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS 85-2-306, 85-2-307, 85-2-310, 85-2-311, AND 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well *or developed spring* with a maximum *appropriation* of less than 100 gallons *per* minute. Within 60 days of completion of the well *or developed spring* and appropriation of the groundwater for beneficial use, the appropriator shall file *a* notice of completion *with the department* on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall *review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects, if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department.* The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and

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recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to [the effective date of this act], with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 2. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks. Before the last date of publication, the department shall also serve the notice by *first-class* mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

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(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 3. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no *objections have been received* and within 180 days if a hearing is held *or objections have been received.* However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department."

Section 4. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

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(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, construction, *and operation of the appropriation works* are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more *and* 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected*;*

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

Section 5. **Water right appropriation account.** There is established a water right appropriation account in the earmarked revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering this part, part 1, part 4, and part 5 of chapter 2, Title 85.

Section 6. Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. *In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement shall be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.*

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

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(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(7) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the processing of such applications for the conservation districts.

(8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

Section 7. **Applicability.** (1) Subsection (2) of [section 1] applies to all notices of completion filed with the department after July 1, 1973.

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(2) Subsection (1) of [section 1], [section 3], and [section 4] apply to notices of completion and applications pending before the department and to those filed with the department after [the effective date of this act].

(3) [Section 6] applies to applications pending before the board on [the effective date of this act], as well as applications filed with the board after [the effective date of this act].

Section 8. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, apply to section 5.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

CHAPTER NO. 358

AN ACT PROVIDING A PROGRAM OF HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214, 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS 75-10-211 AND 75-10-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-202, MCA, is amended to read:

"75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

Section 2. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

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(4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Resource recovery" means the recovery of material or energy from solid waste.

(6) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(7) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(8) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(9) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(10) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(11) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(12) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 3. Section 75-10-204, MCA, is amended to read:

"75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste management systems which shall include but not be limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

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(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered; *and*

(5) any other factors relating to the sanitary disposal or management of solid wastes."

Section 4. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public recreational property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent."

Section 5. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions — exceptions to exclusions. (1) This part may not be construed to prohibit a person from disposing of his own solid waste upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(2) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

Section 6. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required — application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require."

Section 7. Section 75-10-232, MCA, is amended to read:

"75-10-232. Penalty for violations. (1) A person violating this part or regulations prescribed by the department under this part, except

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75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(2) Each day upon which a violation occurs is a separate violation."

Section 8. **Short title.** [Section 8 through 28] shall be known and may be cited as the "Montana Hazardous Waste Act".

Section 9. **Findings and purpose.** (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of [sections 8 through 28] and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

Section 10. **Definitions.** Unless the context requires otherwise, in [sections 8 through 28] the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under [sections 8 through 28].

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

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(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(11) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(12) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(13) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

Section 11. **Powers of department.** (1) The department may:

(a) administer and enforce the provisions of [sections 8 through 28], rules implementing [sections 8 through 28], and orders and permits issued pursuant to [sections 8 through 28];

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private.

(2) The department shall integrate all provisions of [sections 8 through 28] with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under [sections 8 through 28] with the program administered by the department of agriculture under the Montana Pesticides Act, the programs

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administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. Such integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of [sections 8 through 28] and the other laws referred to in this section.

Section 12. **Administrative rules.** The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities and the assessment of permit fees for these facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters; and

(8) other rules which are necessary to obtain and maintain authorization under the federal program, except that the department may not adopt rules under [sections 8 through 28] that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended.

Section 13. **Permits.** (1) No person may construct or operate a hazardous waste management facility without first obtaining a permit from the department for such facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

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(3) A permit may be issued for a period specified by the department and shall be subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to such facility and in compliance with the provisions of [sections 8 through 28] and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of [sections 8 through 28]. Any person who is denied a permit by the department or who has such permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of such denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of [sections 8 through 28], the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Such emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

Section 14. **Concurrent permit and major facility siting decisions.** If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in [section 10], the department shall conduct its review under the provisions of [sections 8 through 28] concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of [section 13] is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of [sections 8 through 28] shall be conducted pursuant to the procedures and enforcement provisions established in [sections 8 through 28].

Section 15. **Variances — renewals.** (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of

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[sections 8 through 28] or any rule adopted under [sections 8 through 28]. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under [sections 8 through 28]. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of [section 22].

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

Section 16. **Compliance monitoring and reporting.** The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with [sections 8 through 28], rules adopted under [sections 8 through 28], any order of the board or department, and permit conditions. The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under [sections 8 through 28], the provisions of [sections 8 through 28], or any orders of the department or board.

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Section 17. **Inspections — sampling.** (1) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation or any property, premises, or place at which records pertinent to such hazardous waste activities are maintained. The employee or agent of the department may have access to and may copy any records relating to such hazardous wastes for the purposes of developing rules under [sections 8 through 28] or enforcing the provisions of [sections 8 through 28], rules adopted under [sections 8 through 28], or a permit or an order issued under [sections 8 through 28].

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any wastes, including samples from any vehicle in which wastes are transported, or samples of any containers or labeling for such wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

Section 18. **Hazardous waste site inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent at any such site may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that no owner or operator is able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in [section 17].

Section 19. **State hazardous waste facilities.** The department may, if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes. The department may acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility. Such a facility may be operated and maintained by the department directly or through agreement with public

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or private persons. A state facility must meet all applicable requirements for a hazardous waste management facility under [sections 8 through 28].

Section 20. **Administrative enforcement.** (1) When the department believes that a violation of [sections 8 through 28], a rule adopted under [it], or a permit provision has occurred, it may serve written notice of the violation by certified mail on the alleged violator or his agent. The notice must specify the provision of [sections 8 through 28], the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under [section 21], [section 24], or [section 25].

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Section 21. **Injunctions.** The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, MCA, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment; or

(2) enjoin a violation of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit.

Section 22. **Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or take such other action as may be necessary.

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Section 23. **Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved hazardous waste disposal. The order shall direct the person to clean up and remove the waste, treat it so as to render it nonhazardous, or to take such other actions as may be considered reasonable by the department.

Section 24. **Civil penalties.** (1) Any person who violates any provision of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Any civil penalty collected under this section is in lieu of the criminal penalty provided for in [section 25].

(3) Action under this section does not bar enforcement of [sections 8 through 28], rules adopted under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(4) Money collected under this section shall be deposited in the state general fund.

Section 25. **Criminal penalties.** (1) Any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained as required by the provisions of [sections 8 through 28] or rules made under [it] is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of [sections 8 through 28], rules made under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(3) Money collected under this section shall be deposited in the state general fund.

Section 26. **Department designated agency for federal program participation — interstate cooperation.** (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after [the effective date of this act] to assist in the management of hazardous wastes.

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(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of [sections 8 through 28] and may carry out the agreements.

Section 27. **Venue for legal proceedings.** All legal proceedings affecting hazardous waste management facilities in the state shall be brought in the county in which the facility is located.

Section 28. **Construction in event of conflict — remedies cumulative.** (1) The provisions of [sections 8 through 28] and rules promulgated pursuant to [it] govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in [sections 8 through 28] are cumulative with other remedies provided by law.

Section 29. **Existing rules, orders, permits, legal proceedings.** (1) All existing rules of the department not inconsistent with the provisions of this act relating to subjects embraced within this act remain in full force and effect until expressly repealed, amended, or superseded by the department.

(2) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this act remain unimpaired and in full force and effect until superseded by actions taken by the department under this act.

Section 30. **Repealer.** Sections 75-10-211 and 75-10-225, MCA, are repealed.

Approved April 14, 1981.

CHAPTER NO. 359

AN ACT TO REVISE THE ALCOHOLIC BEVERAGE LICENSING LAWS AS THEY RELATE TO CORPORATE LICENSE APPLICANTS AND LICENSEES; ELIMINATING RESIDENCY REQUIREMENTS FOR LICENSES OTHER THAN THOSE FOR ON-PREMISES CONSUMPTION; AND PROVIDING FOR LICENSES ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; AMENDING SECTIONS 16-4-103, 16-4-108, AND 16-4-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-103, MCA, is amended to read:

"16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse. (1) Any person desiring to sell and distribute

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beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) *An* applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler *is* entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. *The* duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana."

Section 2. Section 16-4-108, MCA, is amended to read:

"16-4-108. Wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) *An* applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor *is* entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. *A* duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. *The* duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana."

Section 3. Section 16-4-401, MCA, is amended to read:

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"16-4-401. License as privilege — criteria for decision on application. *(1)* A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (5), in the case of a license that permits on-premises consumption, the department must find in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; *and*

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i).

(3) In the case of a license that permits only off-premises consumption or that is for the manufacture or wholesaling of an alcoholic beverage, the department must find in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales;

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(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana.

(4) In the case of a corporate applicant, the requirements of subsections (2)(b) and (3)(b) apply separately to each class of stock.

(5) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 4. **Effect on existing licenses.** The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act or the reissuance of the license.

Approved April 14, 1981.

CHAPTER NO. 360

AN ACT AUTHORIZING CREATION OF INSURANCE PREMIUM FINANCE COMPANIES; PROVIDING FOR LICENSES, FEES, AND RENEWALS; PROVIDING FOR INVESTIGATION OF APPLICANTS; PROVIDING FOR REVOCATION AND SUSPENSION OF LICENSES; REQUIRING MAINTENANCE OF RECORDS; PROVIDING FOR THE CONTENT, FORM, AND DELIVERY OF PREMIUM FINANCE AGREEMENTS; ESTABLISHING METHODS OF COMPUTING CHARGES; REGULATING DELINQUENCY CHARGES; PROVIDING FOR CANCELLATION UPON DEFAULT; REQUIRING RETURN OF UNEARNED PREMIUMS; PROVIDING FOR SECURITY INTEREST; AND PROVIDING FOR CERTAIN EXCEPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Insurance Premium Finance Company Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

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(1) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance agreements from insurance agents, brokers, or other premium finance companies.

(2) "Licensee" means a premium finance company holding a license issued by the commissioner under [this act].

(3) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a finance charge as authorized by [this act], and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

Section 3. **License — required — fee — renewal of license.** (1) Except as provided in subsection (4), no person may engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under [this act] is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee shall be paid to the commissioner.

(3) The person to whom the license or the renewal thereof is issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of [this act].

(4) No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance agent who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner.

Section 4. **Investigation of applicant — qualifications — hearing.** (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with [this act]. If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:

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(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state.

Section 5. **License revocation — suspension.** The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

(1) a license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) the company has violated any provisions of [this act].

Section 6. **Records required of licensees — form — inspection.** (1) Every premium finance company shall maintain records of its premium finance transactions, and the records shall be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring such records as he may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form.

Section 7. **Premium finance agreements — contents — form — delivery.** (1) A premium finance agreement shall:

(a) be dated, signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion thereof shall be in at least 8-point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium therefor; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance (the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii));

(iv) the amount of the finance charge;

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(v) the balance payable by the insured (the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)); and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in subsection (1)(c) need not be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement if the premium finance company and the insured enter into an open end credit transaction, which is defined as a plan prescribing the terms of credit transactions that may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) The premium finance company or the insurance agent shall deliver to the insured or mail to him at his address shown in the agreement a complete copy of the agreement.

Section 8. **Charges for premium financing regulated — method of computation.** (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by [this act].

(2) The finance charge must be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of $12.50 per premium finance agreement. The service charge of $12.50 need not be refunded upon cancellation or prepayment.

(4) An insured may prepay his premium finance agreement in full at any time prior to the due date of the final payment and in such event the unearned finance charge shall be refunded.

Section 9. **Delinquency charges regulated.** (1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of $1 to a maximum of 5% of the delinquent installment but not to exceed $5 on any installment that is in default for 5 days or more.

(2) If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for payment by the insured of a cancellation charge equal to the difference between any delinquency charge or default charge imposed with respect to the installment in default and $5. A premium finance agreement may also provide for the payment of attorney's fees and court costs if the agreement is referred for

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collection to an attorney not a salaried employee of the insurance premium finance company.

Section 10. **Cancellation of insurance upon default.** (1) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than 10 days' written notice must be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or broker indicated on the premium finance agreement shall also be mailed 10 days' notice of this action.

(3) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself but without requiring the return of the insurance contract. If the insurer or its agent does not provide the insurance premium finance company with a specific mailing address for the purpose of receipt of the above notice, mailing by the insurance premium finance company to the insurer at the address that is on file and of record with the commissioner is considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last-known address and to the insurance agent or broker indicated on the premium finance agreement.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

Section 11. **Return of unearned premiums.** (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that no refund is required if such excess amounts to less than $1.

Section 12. **Agreement effective as security interest.** No filing of the premium finance agreement or recording of a premium finance

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transaction shall be necessary to perfect the validity of the agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

Section 13. **Exceptions.** [This act] does not apply to any insurance company or insurance companies affiliated under the same management and control authorized to do business in this state which provide installment premium payments programs at no interest to policyholders or to an insurance agent licensed to do business in this state on policies written by the agent or issued by the company or companies.

Section 14. **Codification instruction.** Sections 1 through 13 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 13.

Approved April 14, 1981.

CHAPTER NO. 361

AN ACT TO REGULATE THE SALE OF HAMBURGER OR GROUND BEEF IN THE VARIOUS FORMS IN WHICH IT IS SOLD AT RETAIL; AMENDING SECTIONS 50-31-103, 50-31-110, AND 50-31-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Beef patty mix" means "hamburger" or "ground beef" to which has been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) "Color" includes black, white, and intermediate grays.

(4) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

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(5) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(1)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(6) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(7) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(8) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(9) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(10) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

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(11) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(12) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(13) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(14) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(15) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point

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of service, and any facility operated by a governmental entity where food is served.

(16) "Hamburger" *or "ground beef"* means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, *to which* no water, binders, or extenders are added. *There are three grades of hamburger or ground beef:*

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

(17) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(23) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

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(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(24) "Person" includes an individual, partnership, corporation, and association.

(25) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(26) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment *or retail establishment.*

(27) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(28) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(29) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public with or without charge.

(30) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104."

Section 2. Section 50-31-208, MCA, is amended to read:

"50-31-208. Sale of hamburger and beef patty mix. (1) No food service establishment *or retail establishment* may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any *beef patty mix.* A food service establishment *or retail establishment* selling or serving *beef patty mix* may refer to the product as "*beef patty mix*" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If *beef patty mix* is sold or served in a food service establishment *or retail establishment,* a list of ingredients must appear on the menu *or label,* or, if there is no menu *or label,* on a placard as follows:

(a) The term "*beef patty mix*" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu *or label,* the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

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(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served *or sold at retail.*

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in section 50-31-103(16), and the maximum fat content must appear on each displayed package, or if the product is not packaged for display, on a placard. If a placard is used it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment."

Section 3. Section 50-31-110, MCA, is amended to read:

"50-31-110. Certain agricultural chemicals not color additives. Subsections *(3)* and *(4)* of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest."

Approved April 14, 1981.

CHAPTER NO. 362

AN ACT TO REESTABLISH THE BOARD OF PHARMACISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; ADDING TWO PUBLIC MEMBERS TO THE BOARD; DELETING THE STORE LICENSE REQUIREMENT; DELETING FELONY CONVICTION AS GROUND FOR DENIAL OR REVOCATION OF LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1609, 37-7-311, AND 37-7-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Pharmacists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Pharmacists be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of pharmacists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

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(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

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(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of pharmacists, department of professional and occupational licensing, created by 2-15-1609."

Section 3. Section 2-15-1609, MCA, is amended to read:

"**2-15-1609. Board of pharmacists.** (1) There is a board of pharmacists.

(2) The board consists of *five* members appointed by the governor. *Three members must be licensed pharmacists, and two members must be from the general public.* Each *licensed* member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy. Each *licensed* member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. However, one member may be a registered pharmacist of 15 years' practical experience and actually engaged in the practice of pharmacy. A *licensed* member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) *Members* shall serve *staggered 3-year terms.* A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-7-311, MCA, is amended to read:

"**37-7-311. Revocation of license issued to pharmacist or intern.** The board shall revoke, temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the pharmacy law; or

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(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern."

Section 5. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license — suspension or revocation. *(1)* The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of $100, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed $50. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of $100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; *or*

(ii) a violation of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059);

(d) when the person to whom the license is granted is a natural person whose pharmacist or intern license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board."

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

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CHAPTER NO. 363

AN ACT TO REESTABLISH THE BOARD OF DENTISTRY UNDER EXISTING STATUTORY AUTHORITY AND RULES; ADDING A PUBLIC MEMBER TO THE BOARD; DELETING THE REQUIREMENT THAT BOARD APPOINTMENTS BE MADE FROM ASSOCIATION LISTS; CORRECTING AN ERRONEOUS BOARD NAME; DELETING THE RAILROAD RATE REIMBURSEMENT FOR BOARD TRAVEL; DELETING THE REQUIREMENT TO MAINTAIN AN EMERGENCY FUND; AUTHORIZING A DENTAL HYGIENIST TO PROVIDE CERTAIN SERVICES WITHOUT A DENTIST ON THE PREMISES DURING BRIEF EMERGENCIES; DELETING A FELONY CONVICTION AS GROUNDS FOR DENIAL OR REVOCATION OF LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1606, 37-4-101, 37-4-203, 37-4-204, 37-4-307, 37-4-321, AND 37-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Dentistry and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Dentistry be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of dentistry is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

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(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

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(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

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(5) The following agency terminates on July 1, 1987: board of dentistry, department of professional and occupational licensing, created by 2-15-1606."

Section 3. Section 2-15-1606, MCA, is amended to read:

"2-15-1606. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists, one dental hygienist, *and one public member,* all appointed by the governor. Each *licensed* member shall be licensed to practice a dental profession in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of *dentistry* provided for in 2-15-1606.

(b) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

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(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 5. Section 37-4-203, MCA, is amended to read:

"37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall be reimbursed as follows:

(a) $25 per day for each day in actual attendance at a meeting of the board;

(b) expenses and travel authorized under 2-18-501 through 2-18-503.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board."

Section 6. Section 37-4-204, MCA, is amended to read:

"37-4-204. Affiliation with national association authorized — delegate — expenses allowed. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association. The delegate shall be reimbursed as follows:

(1) $15 per day for each day traveling to and from a meeting and while in actual attendance at a meeting; *and*

(2) expenses and travel authorized under 2-18-501 and 2-18-503."

Section 7. Section 37-4-307, MCA, is amended to read:

"37-4-307. Annual renewal fee — absent registered dentist — default. (1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year,

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a sum set by the board and not to exceed $50. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year, not to exceed $25, or at the discretion of the board, he may be reinstated on the payment of a fee of $25 for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty of $10 before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

Section 8. Section 37-4-321, MCA, is amended to read:

"37-4-321. Grounds for disciplinary proceedings — range of sanctions. The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter for any of the following causes:

(1) physical or mental incompetence;

(2) gross malpractice or repeated malpractice;

(3) unprofessional conduct, as defined by rule of the board; or

(4) violation of any of the provisions of this chapter or rules or orders of the board."

Section 9. Section 37-4-405, MCA, is amended to read:

"37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic authorized by the board.

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(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review by the board of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation.

(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent."

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

CHAPTER NO. 364

AN ACT TO CLARIFY THE LAW WHICH ADDRESSES THE CONDITIONS UNDER WHICH THE CHANGE OF OWNERSHIP LIVESTOCK INSPECTION REQUIREMENTS DO NOT APPLY AND TO CLARIFY THE DATE ON WHICH THE BRUCELLOSIS VACCINATION REQUIREMENT IS EFFECTIVE; PROVIDING AN EFFECTIVE DATE FOR THE LATTER CLARIFICATION; AMENDING SECTION 81-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when:

(a) such sale or change of ownership transaction involves five or fewer such animals; or

(b) the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection, *and is between:*

(i) members of the same family;

(ii) a member of one family and the same family's business entity; or

(iii) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where

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change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

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(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line."

Section 2. **Effective date of brucellosis vaccination requirement.** (1) Chapter 196 of the Laws of 1981 is effective on the effective date of this subsection.

(2) Subsection (1) is effective on passage and approval.

Approved April 14, 1981.

CHAPTER NO. 365

AN ACT TO GENERALLY REVISE AND CLARIFY THE PROVISIONS RELATING TO FEES CHARGED BY EMPLOYMENT AGENCIES; AMENDING SECTIONS 39-5-303, 39-5-310, AND 39-5-311, MCA; AND REPEALING SECTION 39-5-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-5-303, MCA, is amended to read:

"39-5-303. Regulation of fees — disapproval of contract. *(1) The fee charged by any employment agency for its services must be based on a percentage of the income of the applicant during his first year of employment. The percentage charged must be determined by the agency and is not subject to disapproval by the director.*

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, *or* misrepresentative."

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Section 2. Section 39-5-310, MCA, is amended to read:

"39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two *employment agencies*, the fee shall be paid to the *agency that* first contacted the applicant concerning the specific opening, provided that *such agency* has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such *contact with the applicant.*"

Section 3. Section 39-5-311, MCA, is amended to read:

"39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) *If employment obtained for an applicant ends in less than 100 calendar days from the first day of employment, regardless of the reason, the fee charged by the agency will be reduced by 1% of the fee for each calendar day remaining of the 100 days.*

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the director."

Section 4. **Repealer.** Section 39-5-309, MCA, is repealed.

Approved April 14, 1981.

CHAPTER NO. 366

AN ACT TO PROVIDE THAT, UNDER THE GROSS VEHICLE WEIGHT LAW, THE MAXIMUM LOAD PER INCH OF TIRE WIDTH, EXCLUDING THE STEERING AXLE, MAY NOT EXCEED 600 POUNDS; AMENDING SECTIONS 61-10-105 AND 61-10-107, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-105, MCA, is amended to read:

"61-10-105. Permissible loads. (1) An axle may not carry a load in excess of 18,000 pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles

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is 18 feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is 18 feet or less, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of any Group of Axles of any vehicle or Combination of Vehicles or Between the First and Last Axles of all of the Axles of any Vehicle.	Maximum Gross Weight, in Pounds, of any Group of Axles, of any Vehicle or Combination of Vehicles, or of any Vehicle.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination of vehicles is more than 18 feet, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of all the Axles of a Vehicle or Combination of Vehicles.	Maximum Gross Weight, in Pounds, of any Vehicle or Combination of Vehicles.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800

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29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

(3) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the following table showing credit in inches allowed for calculating total pounds permissible per tire:

Multiply Inches Allowed by Load Limit Per Inch of Tire Width

Tubeless Tire Size	*Conventional Replacement Tubed Tire Size*	*Inches Credit Allowed When Calculating Total Pounds Permissible Per Tire*
6.00-16	*6.00-16*	*6*
6.50-16	*6.50-16*	*6-½*
7-17.5	*7.00-15*	*7*
7-22.5	*6.50-20 & 7.00-20*	*7*
8-17.5	*7.00-16, 7.50-15 & 7.50-16*	*7-½*
8-19.5	*7.00-17 & 7.50-17*	*7-½*

8-22.5	*7.50-20*	*7-½*
9-22.5	*8.25-20*	*8-¼*
10-22.5	*9.00-20*	*9*
11-22.5	*10.00-20*	*10*
11-24.5	*10.00-22*	*10*
12-22.5	*11.00-20*	*11*
12-24.5	*11.00-22*	*11*

Duplex Tires (new type single tires to replace dual tires)

Load limits shall be computed for duplex tires on the number of inches shown on tire marking. They are not to be computed on the basis of inches of tire replaced.

Example:

18" duplex tire at 400 pounds for inch width — 7200 pounds"

Section 2. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross axle weight — permit required. (1) The department of highways may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of $10, specifiying highway routings, the operation of a vehicle having two but not more than nine axles if the maximum single axle load is 20,000 pounds and if no two consecutive axles more than 40 inches or less than 96 inches apart carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. The maximum gross weight allowed on a vehicle or combination so authorized by this special permit shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet, and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23

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U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 3. **Effective date.** This act is effective July 1, 1981.

Approved April 14, 1981.

CHAPTER NO. 367

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO MODIFY THE PERCENTAGE MULTIPLIER USED IN CONVERTING THE MARKET VALUE OF RAILROAD PROPERTY TO TAXABLE VALUE IN ORDER TO ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL RAILROAD REVITALIZATION AND REGULATORY REFORM ACT; AMENDING SECTIONS 15-6-141 AND 15-23-202, MCA; PROVIDING AN APPLICABILITY DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class eleven property — description — taxable percentage. (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) *Except as provided in 15-23-202, property* described in subsection (1)(c) is taxed at 15% of market value."

Section 2. Section 15-23-202, MCA, is amended to read:

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"15-23-202. Assessment — how made. *(1)* The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.

(2) In determining the taxable value of railroad property, the department may modify the percentage multiplier provided for in 15-6-141 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to tax years beginning after December 31, 1980.

Approved April 14, 1981.

CHAPTER NO. 368

AN ACT AMENDING SECTION 13-10-601, MCA, TO ALLOW A MINOR PARTY TO QUALIFY TO HOLD A PRIMARY ELECTION BY PETITION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary election — petitions by minor parties. *(1)* Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall

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forward the verified petition to the secretary of state at least 50 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state."

Approved April 14, 1981.

CHAPTER NO. 369

AN ACT TO ALLOW SEARCH AND RESCUE AND VOLUNTEER EMERGENCY MEDICAL PERSONNEL TO USE RED BLINKER OR REVOLVING LIGHTS ON THEIR PRIVATE VEHICLES IF IN EMERGENCY SERVICE; REMOVING THE INSCRIPTION REQUIREMENT AND SIZE LIMITATION FOR SUCH LIGHTS WHEN USED BY FIREFIGHTERS; AMENDING SECTION 61-9-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-227, MCA, is amended to read:

"**61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card.** (1) Firefighters, when authorized by the chief of their respective department, *and search and rescue and volunteer emergency medical personnel, when authorized by the county sheriff, may* use a blinker-type *or revolving* red light on the front *or the top* of their privately owned motor vehicles. This light shall be used on emergency duty only.

(2) Any firefighter *or search and rescue or volunteer emergency medical personnel* displaying the emergency red light on *a* privately owned motor vehicle shall also carry attached to a convenient location on the vehicle to which the red light is attached an identification card showing the name of the owner of said vehicle, the organization to which he belongs, and bearing the signature of the *person* authorizing the emergency use of said light."

Approved April 14, 1981.

CHAPTER NO. 370

AN ACT TO REVISE THE HOMESTEAD EXEMPTION LAWS; INCREASING THE EXEMPTION TO $40,000; INCLUDING MOBILE HOMES WITHIN THE EXEMPTION; ALLOWING ALL PERSONS TO CLAIM THE EXEMPTION; ALLOWING THE EXEMPTION TO BE CLAIMED AFTER A JUDGMENT IS RECORDED; AMENDING SECTIONS 25-13-614, 25-13-617, 70-32-101, 70-32-103 THROUGH 70-32-106, AND 70-32-202, MCA; AND REPEALING SECTION 70-32-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-32-101, MCA, is amended to read:

"**70-32-101. Of what homestead consists.** The homestead consists of the dwelling house *or mobile home, and all appurtenances,* in

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which the claimant resides and the land, *if any*, on which the same is situated, selected as in this chapter provided."

Section 2. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property it may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property."

Section 3. Section 70-32-104, MCA, is amended to read:

"70-32-104. Limitations on quantity and value which may be selected. (1) Homesteads may be selected and claimed *consisting of*:

(a) *a* quantity of land not exceeding 320 acres used for agricultural purposes and the dwelling house *or mobile home* thereon and its appurtenances and not included in any *municipality*;

(b) a quantity of land not in a municipality, not exceeding 1 acre and not used for agricultural or commercial purposes, and the dwelling house or mobile home thereon and its appurtenances; or

(c) a quantity of land *within a municipality*, not exceeding one-fourth of an acre, and the dwelling house *or mobile home* thereon and its appurtenances.

(2) Such homestead, in either case, shall not exceed in value the sum of *$40,000*. However, in any proceedings instituted to determine the value of such homestead, the assessed value of *the* land with included appurtenances, if any, and of *the* dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead."

Section 4. Section 70-32-105, MCA, is amended to read:

"70-32-105. Mode of selection — declaration required. *The person selecting* a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record."

Section 5. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead *and* a description of the premises."

Section 6. Section 70-32-202, MCA, is amended to read:

"70-32-202. Execution allowed under certain judgments. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by mechanics' or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant; *or*

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(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record."

Section 7. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) The earnings of the judgment debtor for his personal services rendered at any time within 45 days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor, are exempt; but where debts are incurred by any such person or his wife or family for gasoline and for the common necessaries of life, then the one-half of such earnings are nevertheless subject to execution, garnishment, and attachment to satisfy debts so incurred.

(2) The words "his family", as used in this section, are to be construed *to include:*

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

Section 8. Section 25-13-617, MCA, is amended to read:

"25-13-617. Truck or automobile. (1) In addition to all other exemptions, one truck or automobile of the value of not more than *$1,000* is exempt from attachment or execution where the debtor is the head of a family or over 60 years of age; but where debts are incurred by any such debtor or his wife or family for the common necessaries of life, then such truck or automobile is nevertheless subject to attachment and execution to satisfy debts so incurred.

(2) The words "his family", as used in this section, are to be construed *to include:*

(a) the debtor's spouse;

(b) every person who resides with the debtor under his care or maintenance and who is:

(i) a minor child of the debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the debtor or of his spouse;

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(iii) a father, mother, grandfather, or grandmother of the debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

Section 9. **Repealer.** Section 70-32-102, MCA, is repealed.

Approved April 14, 1981.

CHAPTER NO. 371

AN ACT TO RECOGNIZE A SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL OR DITCH; TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF EASEMENTS FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY OTHER LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING CARRYING RETURN WATER; TO PROVIDE FOR THE PAYMENT OF COSTS AND ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS UNDER THIS ACT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interference with canal or ditch easements prohibited.** (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.

(2) No person may encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to [the effective date of this act]. This section does not affect contracts or agreements concluded prior to [the effective date of this act].

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1981.

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CHAPTER NO. 372

AN ACT AMENDING SECTION 75-20-219, MCA, TO ASSIGN THE BURDEN OF PROOF WHEN APPLICATION IS MADE TO AMEND A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED UNDER THE MONTANA MAJOR FACILITY SITING ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1) including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If *the department or the board under subsection (4) determines that* a hearing is required *because the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility,* the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in any material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, and a hearing is required because the department's determination is appealed to the board as provided in 75-20-219(2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application.

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(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health."

Approved April 14, 1981.

CHAPTER NO. 373

AN ACT TO CLARIFY THE ROLE OF THE STATE LIBRARY COMMISSION; TO REVISE THE FUNDING PROGRAM FOR LIBRARIES; AMENDING SECTIONS 22-1-412 AND 22-1-413, MCA; REPEALING SECTIONS 22-1-414 THROUGH 22-1-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-412, MCA, is amended to read:

"22-1-412. Purpose. It is the purpose of 22-1-412 *and 22-1-413* to establish a program whereby state funds *may be* appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402."

Section 2. Section 22-1-413, MCA, is amended to read:

"22-1-413. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation *among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103.* Federations receiving *state funds from the commission* shall report semiannually to the commission concerning the progress of the various projects for which state funding *was* received, which *reports* shall contain an accounting for all *state* funds received."

Section 3. **Repealer.** Sections 22-1-414 through 22-1-416, MCA, are repealed.

Approved April 15, 1981.

CHAPTER NO. 374

AN ACT TO UPDATE LIBRARY FUNDING PROVISIONS TO REFLECT CURRENT PRACTICE; AMENDING SECTION 22-1-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-402, MCA, is amended to read:

"22-1-402. Library systems — definition. Library systems shall include library federations or library networks, as defined hereafter:

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(1) (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation.

(b) Two or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract.

(c) The expense of providing library services for the library federation shall be *based on funds received from the state or participating libraries* as shall be agreed upon in the contract. *The funds of the federation shall be maintained as a separate account as shall be provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.*

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of information or to provide specific library services not provided in existing library federations."

Approved April 15, 1981.

CHAPTER NO. 375

AN ACT TO DELETE THE REQUIREMENT THAT BEFORE BEING PAID SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES FILE AN AFFIDAVIT THAT NO MATTERS BEFORE THEM HAVE BEEN PENDING FOR OVER 90 DAYS; REQUIRING AN AFFIDAVIT FOR MATTERS PENDING OVER 90 DAYS; PROVIDING FOR REFERRAL TO THE JUDICIAL STANDARDS COMMISSION AND FOR THE WITHHOLDING OF SALARY; AMENDING SECTIONS 3-2-104 AND 3-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-104, MCA, is amended to read:

"3-2-104. Salaries — expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the justice of the supreme court who has been assigned to write the opinion,

order, or decision of the court shall submit an affidavit on or before the 90th day to the chief justice setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the other members of the supreme court for good cause shown in an affidavit requesting additional time. If a justice of the supreme court violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the other members of the supreme court may refer the matter to the judicial standards commission. If the court, acting upon the recommendation of the commission, determines the justice is not in compliance with this section, it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the justice.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 2. Section 3-5-212, MCA, is amended to read:

"3-5-212. *If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the district court judge before whom the matter is pending shall submit an affidavit on or before the 90th day to the chief justice of the supreme court setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the supreme court for good cause shown in an affidavit requesting additional time. If a district judge violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the supreme court may refer the matter to the judicial standards commission. If the supreme court, acting upon the recommendation of the commission, determines that the judge is not in compliance with this section it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the judge."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1981.

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CHAPTER NO. 376

AN ACT TO PROVIDE GREATER FLEXIBILITY FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT BONDS BY A MUNICIPALITY OR COUNTY UNDER TITLE 90, CHAPTER 5, MCA, BY AUTHORIZING THE ISSUANCE OF SHORT-TERM BONDS ISSUED IN ANTICIPATION OF THE ISSUANCE OF LONG-TERM BONDS; REQUIRING ONLY ONE HEARING FOR REFUNDING BONDS ISSUED TO ACQUIRE A PROJECT; PROVIDING FOR THE REFUNDING OF SHORT-TERM BONDS ISSUED IN ANTICIPATION OF THE ISSUANCE OF LONG-TERM BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS FROM THE SALE OF REFUNDING BONDS; AMENDING SECTIONS 90-5-101, 90-5-104, AND 90-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including, without limitation, short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Mortgage" means a mortgage or deed of trust or other security device.

(5) "Municipality" means any incorporated city or town in the state.

(6) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; and any combination of these projects."

Section 2. Section 90-5-104, MCA, is amended to read:

"90-5-104. Hearing. *(1)* Prior to the issuance of any bonds under the authority of this part by any municipality or county *to pay the costs of acquiring or improving a project*, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for 3 consecutive weeks prior to the date set for the hearing, the governing

body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing, the general nature of the project, the name of the lessee, borrower, *or user of the project,* and the estimated cost of the project. The governing body may not issue the bonds *to pay the costs of acquiring or improving a project* unless it appears after the public hearing that the acquisition or improvement of the project is in the public interest of the municipality or county.

(2) The provisions of subsection (1) do not apply to refunding bonds issued under 90-5-107 to refund bonds issued to pay the costs of acquiring or improving a project as to which a hearing was held under subsection (1)."

Section 3. Section 90-5-107, MCA, is amended to read:

"**90-5-107. Refunding of bonds.** (1) Any bonds issued under the provisions of this part and at any time outstanding, *including, without limitation, short-term bonds issued in anticipation of the issuance of long-term bonds,* may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any interest thereon and any premiums and commissions necessary to be paid in connection therewith. An issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of 90-5-106(1).

(2) Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. The holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this part shall be subject to the provisions contained in 90-5-103 and may be secured in accordance with the provisions of 90-5-105.

(3) The principal proceeds from the sale of any refunding bonds may be applied only as follows, either:

(a) to the immediate payment and retirement of the bonds being refunded; or

(b) to the extent not required for the immediate payment of the bonds being refunded, such proceeds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded and to pay any expenses incurred in connection with such refunding, except that provision may be made for the pledging and disposition of any surplus, including, without limitation, to the payment of the principal of and interest on any issue or series of refunding bonds.

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(4) Money in a trust fund under subsection (3) may be invested in direct obligations of the United States government, obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any agency or instrumentality of the United States government.

(5) Nothing in this section may be construed as a limitation on the duration of any deposit in trust for the retirement of bonds being refunded but that have not matured and that are not presently redeemable or, if presently redeemable, have not been called for redemption."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1981.

CHAPTER NO. 377

AN ACT REQUIRING THE COUNTY CLERK TO RECORD A DOCUMENT TERMINATING INTERESTS NOT REQUIRING PROBATE WHEN THE TERMINATION RESULTS FROM THE DEATH OF THE PERSON HOLDING THE INTEREST; AMENDING SECTIONS 7-4-2613 AND 72-16-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"7-4-2613. Documents subject to recording. The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is

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deceased and that his interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It shall contain:

(a) a statement that the holder of the nonprobate interest has died and that his interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that no inheritance or estate tax was due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments which by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands;

(17) such other writings as are required or permitted by law to be recorded."

Section 2. Section 72-16-503, MCA, is amended to read:

"72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall *record* with the clerk and recorder of each county in which the real property or any part thereof is located *a document containing those matters required by 7-4-2613(3).*

(2) The *recording* of the documents under subsection (1) constitutes release of any lien for inheritance taxes."

Approved April 15, 1981.

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CHAPTER NO. 378

AN ACT TO REESTABLISH THE BOARD OF MORTICIANS; REDUCING THE BOARD MEMBERSHIP TO FIVE; REMOVING RESTRICTIONS ON PUBLIC BOARD MEMBER PARTICIPATION; REQUIRING WRITTEN DISCLOSURE OF FUNERAL COSTS AND EMBALMING REQUIREMENTS; MODIFYING COLLEGE STUDY REQUIREMENT FOR LICENSURE; CLARIFYING THE RECIPROCITY PROVISIONS FOR MORTICIANS LICENSED IN ANOTHER STATE; PROVIDING AUTHORITY FOR RULES ON CONTINUING EDUCATION; DELETING FELONY CONVICTION AS GROUNDS FOR DENIAL OR REVOCATION OF A LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1619, 37-19-302, 37-19-305, AND 37-19-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Morticians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Morticians be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of morticians is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

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(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

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(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of morticians, department of professional and occupational licensing, created by 2-15-1619."

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Section 3. Section 2-15-1619, MCA, is amended to read:

"2-15-1619. Board of morticians. (1) There is a board of morticians.

(2) The board consists of *five* members appointed by the governor with the consent of the senate. *Four* members shall be licensed morticians. One member shall be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.

(3) *Board members* shall serve *staggered 5-year terms.*

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-19-302, MCA, is amended to read:

"37-19-302. License required for practice of mortuary science — qualifications of applicants. The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the department is prohibited. To qualify for a mortician's license, a person must:

(1) be of good moral character;

(2) have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years at an accredited college or university *or have experience considered equivalent by the board*;

(3) pass an examination prescribed by the board;

(4) serve a 1-year internship under the supervision of a mortician in a licensed mortuary in Montana."

Section 5. Section 37-19-305, MCA, is amended to read:

"37-19-305. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if *a reciprocal agreement is required by the other state, it* has a reciprocal agreement with Montana."

Section 6. Section 37-19-311, MCA, is amended to read:

"37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(2) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

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(3) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(a) which does not properly protect the rights of the public;

(b) where there is any element of fraud; or

(c) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed."

Section 7. **Funeral costs — rules on disclosure.** The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

Section 8. **Continuing education requirements.** The board may establish by rule continuing education programs and continuing education requirements. Compliance with continuing education requirements may be used as a condition of continued licensure. In adopting rules and individual orders regarding continuing education the board in its discretion:

(1) may use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) may prescribe the content, duration, and organization of courses;

(3) shall take into account the accessibility to applicants of such continuing education as it may require; and

(4) shall avoid any impediments to interstate practice that may result from differences in continuing education requirements in other states.

Section 9. **Codification instruction.** Sections 7 and 8 are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to sections 7 and 8.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1981.

CHAPTER NO. 379

AN ACT TO REVISE AND CLARIFY THE LAW CREATING THE BOARD OF PHARMACISTS AND THE LAWS ADMINISTERED BY THE BOARD OF PHARMACISTS; AMENDING SECTIONS 2-15-1609, 37-2-101, 37-7-101, 37-7-201, 37-7-301 THROUGH 37-7-303, 37-7-311, 37-7-321, 37-7-401, 37-7-502, 50-32-101, 50-32-208, 50-32-209, AND 50-32-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1609, MCA, is amended to read:

"2-15-1609. Board of pharmacists. (1) There is a board of pharmacists.

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(2) The board consists of three members appointed by the governor. The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy *accredited* by the American *council on pharmaceutical education*. Each member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of 3 years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-2-101, MCA, is amended to read:

"37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, or chiropody (podiatry) and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to such pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs *requiring a prescription.*

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.

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(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof."

Section 3. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacists provided for in 2-15-1609.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons *under the supervision of a registered and licensed pharmacist.*

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

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(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph."

(11) "Pharmacy" means *an* established place registered by the department of professional and occupational licensing, in which prescriptions, drugs *requiring a prescription*, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Wholesale" means a sale for the purpose of resale."

Section 4. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

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(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; and

(c) issue certificates of "certified pharmacy" under this chapter."

Section 5. Section 37-7-301, MCA, is amended to read:

"37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It is unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

(2) It is unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern *registered and licensed by the department, under the supervision of a registered and licensed pharmacist.*

(3) It is unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It is unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern *under the supervision of a licensed and registered pharmacist* to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3."

Section 6. Section 37-7-302, MCA, is amended to read:

"37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination. On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy *accredited* by the American *council on pharmaceutical education*; but the applicant may not receive a registered pharmacist's

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license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. *The fee for registration by reciprocity is $200.*

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business."

Section 7. Section 37-7-303, MCA, is amended to read:

"37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee of $15. A default in the payment of a renewal fee after the date it is due increases the renewal fee to $30. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee of up to $10 for such license renewal to be used in administering the continuing education provisions of this chapter."

Section 8. Section 37-7-311, MCA, is amended to read:

"37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of a felony;

(4) has been convicted of violating the pharmacy law; or

(5) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern."

Section 9. Section 37-7-321, MCA, is amended to read:

"37-7-321. Store license — certified pharmacy license — suspension or revocation. (1) The department shall, on application on forms prescribed by the board and on the payment of an annual fee of $10, license stores other than pharmacies in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer qualified under the laws of the state in which the manufacturer

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resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs without first having secured a license and thereafter keeping it in force by proper renewal.

(2) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of $100, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed $50. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee to the sum of $100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter;

(ii) a felony; or

(iii) a violation of the Federal Food, Drug, and Cosmetic Act, (*Title 21, chapter 9, United States Code*);

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the store or pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(4) Before a license can be revoked, the holder is entitled to a hearing by the board."

Section 10. Section 37-7-401, MCA, is amended to read:

"37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It shall be unlawful for any physician to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of such patients.

(2) A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill *instructions* may *not* be refilled *without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled.* No narcotic prescription may be refilled."

Section 11. Section 37-7-502, MCA, is amended to read:

"37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/*National Formulary.*

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

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(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity."

Section 12. Section 50-32-101, MCA, is amended to read:

"50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 2-15-1609.

(4) "Bureau" means the *drug enforcement administration*, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

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(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to *it*;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Drug" does not include a device or its components, parts, or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) "Manufacture" does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in (17)(a) of this section, but not including the isoquinoline alkaloids of opium;

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(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(20) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) The term "prescription" is given the meaning it has in 37-7-101.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(25) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(26) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household."

Section 13. Section 50-32-208, MCA, is amended to read:

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"50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned."

Section 14. Section 50-32-209, MCA, is amended to read:

"50-32-209. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually. *For the purposes of this section the mandate to republish may be satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4."*

Section 15. Section 50-32-301, MCA, is amended to read:

"50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter."

Section 16. **Coordination with Senate Bill 412.** If Senate Bill 412 introduced in the 47th legislature is passed and approved that portion of section 6, or any other section of this bill, that amends 37-7-302, to provide for a fee for registration by reciprocity is void and of no effect.

Approved April 15, 1981.

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CHAPTER NO. 380

AN ACT REGULATING THE UTILIZATION OF PHYSICIANS' ASSISTANTS; AMENDING SECTION 37-3-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Duties of board of medical examiners — compensation and expenses of members.** The Montana state board of medical examiners provided for in 2-15-1605 shall administer the provisions of [sections 1 through 6 and 8 through 10] under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of [sections 1 through 6 and 8 through 10]. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under [sections 1 through 6 and 8 through 10].

Section 2. **Utilization plan required — contents — approval.** (1) No physician, office, firm, state institution, or professional service corporation may employ or make use of the services of a physician's assistant in the practice of medicine, as defined in 37-3-102, and no physician's assistant may be employed as a physician's assistant unless the assistant is supervised by a licensed physician and unless such employment or use has been approved by the Montana state board of medical examiners in a physician's assistant utilization plan.

(2) A physician's assistant utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician and the physician's assistant, as provided in [section 3];

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the physician's assistant and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of [section 3] to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the physician's assistant temporarily; and

(e) such other information as the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the physician's assistant are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician's assistant.

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Section 3. **Qualifications of supervising physician and physicians' assistants.** (1) Each supervising physician named in the utilization plan required by [section 2] shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the assistant to be employed is of good character and is both mentally and physically able to perform the duties of a physician's assistant described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician's assistant in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Except as provided in subsection (3), each physician's assistant named in the utilization plan required by [section 2] shall:

(a) be of good character;

(b) be a graduate of a physician's assistant training program approved by the American medical association;

(c) have taken an examination recognized by the national commission on physicians' assistants and received a score satisfactory to the board;

(d) hold a current certification by the national commission on physician's assistants; and

(e) submit to the board detailed information on the applicant's history, education, and experience and such other information as the board may require.

(3) In lieu of the requirements of subsections (2)(b), (2)(c), and (2)(d) the physician's assistant may be a graduate of an approved medical school as defined in 37-3-102 and pass an examination approved by the board.

Section 4. **Utilization plan approval fee — renewal of approval — renewal fee.** (1) Every physician, office, firm, or professional service corporation proposing to employ a physician's assistant shall pay to the board a utilization plan approval fee in an amount set by the board, not exceeding $50. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) Approval of every physician's assistant utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of professional and occupational licensing shall notify each physician, office, firm, or professional corporation and physician's assistant named in

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a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.

(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.

(4) Fees received by the department must be deposited in the earmarked revenue fund for use by the board in the administration of [sections 1 through 6 and 8 through 10], subject to 37-1-101(6).

Section 5. **Penalty — enforcement.** (1) Any person who employs a physician's assistant or holds himself out to be a qualified physician's assistant without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may withdraw its approval of any utilization plan previously approved which is applicable to any supervising physician or physician's assistant who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of [sections 1 through 6 and 8 through 10] or rules of the board adopted thereunder.

(3) The board may enforce the provisions of this section by the remedy of injunction.

Section 6. **Exemptions from approval requirement.** [Sections 1 through 6 and 8 through 10] do not require the approval of a physician's assistant utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

Section 7. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

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(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the *appropriate amount and type of* supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with [sections 1 through 6 and 8 through 10]; and

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, *with the exception of those licensees who hold a medical degree,* may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 8. **Insurance requirement.** No physician's assistant may perform any service unless he has insurance from liability for his errors,

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omissions, or actions to the limits required by the hospital's governing authority.

Section 9. **Adoption of rules.** The board of medical examiners shall adopt administrative rules to implement the provisions of [sections 1 through 6 and 8 through 10] that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately; and

(4) address other considerations pertinent to the approval of physicians' assistants utilization plans and the health care needs of the public.

Section 10. **Limitations on authority conferred — exception.** Except as provided in 37-10-102, nothing in this act may be construed to authorize a physician's assistant to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1981.

CHAPTER NO. 381

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO REQUIRE THE REPORTING OF JUDICIAL CASES TO THE ADMINISTRATIVE CODE COMMITTEE; AMENDING SECTIONS 2-4-302, 2-4-305, 2-4-314, 2-4-402, AND 2-4-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

(2) The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed *within 3 days of publication* to persons who have made timely requests to the agency for notice of

its rulemaking proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, *the notice of proposed rulemaking must state that* opportunity for oral hearing shall be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, *by the administrative code committee,* or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. *In the discretion of the agency, contested* case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code Committee" appearing in the register."

Section 2. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. *If substantial differences exist between the rule as proposed and as adopted, and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana administrative register, the differences must be described in the statement of reasons for and against agency action.* When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each *proposed and adopted* rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each *proposed and adopted* rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

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(4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a "policy", as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. *If an amended or supplemental notice of either proposed or final rulemaking or both is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases."*

Section 3. Section 2-4-314, MCA, is amended to read:

"2-4-314. Biennial review by agencies — report. (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) Prior to October 1, 1980, and prior to October 1 of each even-numbered year thereafter, each agency shall prepare and submit a report to the administrative code committee, in tabular or other form, indicating the agency's recommendations for legislation which will clarify existing grants of rulemaking authority and grant or eliminate rulemaking authority as necessary.

(3) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary."

Section 4. Section 2-4-402, MCA, is amended to read:

"2-4-402. Powers of the committee — duty to review rules. (1) The committee shall review all proposed rules filed with the secretary of state.

(2) Rules proposed by the department of revenue may be reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act.

(3) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(b) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(c) institute, intervene in, or otherwise participate in proceedings

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involving this chapter in the state and federal courts and administrative agencies;

(d) review the incidence and conduct of administrative proceedings under this chapter."

Section 5. Section 2-4-412, MCA, is amended to read:

"2-4-412. Legislative review of rules — effect of failure to object. (1) The legislature may, by joint resolution, repeal any rule in ARM. If a rule is repealed, the legislature shall in the joint resolution state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in ARM or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall in the joint resolution state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection (2) of this section shall conform and be pursuant to statutory authority.

(4) Failure of the legislature or the administrative code committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule."

Section 6. **Report of litigation.** Each agency shall report to the administrative code committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

Section 7. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to section 6.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1981.

CHAPTER NO. 382

AN ACT TO PROVIDE A SET OF THE MONTANA CODE ANNOTATED STATUTE TEXT AND HISTORIES TO EACH LEGISLATOR AT A CHARGE OF $10 AND TO RESERVE 50 SETS OF THE MONTANA CODE ANNOTATED FOR THE USE OF THE LEGISLATURE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. **Codes — availability to legislators — reserved for use by legislative committees.** (1) Immediately after the Montana Code Annotated statute text and histories are bound following each legislative session, the legislative council shall make available one set of these volumes to each member of the legislature at a charge of $10.

(2) The legislative council shall reserve 50 sets of the Montana Code Annotated statute text and histories for the use of legislative committees appointed under 5-2-201.

(3) Costs associated with providing code sets as required by this section shall be paid out of the revolving fund account established under 1-11-301, MCA.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 5, chapter 11, part 2, and the provisions of Title 5, chapter 11, part 2, apply to section 1.

Approved April 15, 1981.

CHAPTER NO. 383

AN ACT TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO DRAFT RULES TO SPECIFY WHEN PUBLIC ASSISTANCE MAY BE DENIED TO A PERSON WHO HAS TRANSFERRED PROPERTY FRAUDULENTLY; AMENDING SECTION 53-2-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-601, MCA, is amended to read:

"53-2-601. Eligibility determination — rules on fraudulent transfer of property. *The department may deny public* assistance to any person who has *divested* himself directly or indirectly of any property for the purpose of qualifying for *public* assistance. *The department shall make rules that raise a rebuttable presumption that any* transfer *of* property *for less than fair market value* within *2* years of the date of application for public assistance *was* for the purpose of qualifying for *public* assistance."

Approved April 15, 1981.

CHAPTER NO. 384

AN ACT TO ALLOW A COUNTY OFFICER WHO IS PAID ON A PER-DAY BASIS TO BE PAID HIS PER-DAY RATE OF PAY FOR ATTENDANCE AT CONVENTIONS, MEETINGS, OR OTHER GATHERINGS OF PUBLIC OFFICERS; AMENDING SECTION 7-5-2145, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2145, MCA, is amended to read:

"7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, no county

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officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

(3) County attorneys, sheriffs, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

(4) Any county officer paid on a per-day basis for his performance of official duties is allowed his per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of his office find it necessary to attend.

Approved April 15, 1981.

CHAPTER NO. 385

AN ACT AMENDING SECTION 7-32-4114, MCA, TO ALLOW A MEMBER OF A POLICE FORCE AND HIS FAMILY THE RIGHT TO PARTICIPATE IN POLITICAL ACTIVITY AND TO ALLOW MEMBERS OF HIS FAMILY TO HOLD PUBLIC OFFICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4114, MCA, is amended to read:

"7-32-4114. Restrictions on activities of policemen. (1) No member of the police force *may* hold any other office or be employed in any other department of the city or town government.

(2) The fact that a person is an officer or member of the police department does not deprive his spouse or any member of his family of the right to participate in political activity or to hold public or political office.

(3) An officer or member of the police department may participate in political activity provided he does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of his duties."

Approved April 15, 1981.

CHAPTER NO. 386

AN ACT TO PROVIDE THAT TOTAL DISABILITY COMPENSATION BENEFITS WILL TERMINATE WHEN A CLAIMANT RECEIVES RETIREMENT SOCIAL SECURITY BENEFITS OR WHEN DISABILITY SOCIAL SECURITY BENEFITS ARE CONVERTED TO RETIREMENT BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Termination of total disability benefits upon retirement.** If a claimant is receiving total disability compensation benefits and

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the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market. When the claimant is considered retired, the liability of the insurer is ended for payment of such compensation benefits. This section does not apply to permanent partial disability benefits. Medical benefits are expressly reserved to the claimant.

Approved April 15, 1981.

CHAPTER NO. 387

AN ACT TO AMEND THE GOVERNOR'S ENERGY EMERGENCY SUPPLY POWERS TO EXTEND AN ENERGY EMERGENCY CONDITION TO 45 DAYS BEFORE AUTOMATIC TERMINATION WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 90-4-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-310, MCA, is amended to read:

"90-4-310. Energy emergency — powers of governor. In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in this part:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after *45* consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

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(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in this part means that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in this part exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor."

Approved April 16, 1981.

CHAPTER NO. 388

AN ACT TO PROVIDE STATUTORY AUTHORITY TO ESTABLISH A TRUST ACCOUNT FOR THE OPERATION, DEVELOPMENT, AND MAINTENANCE OF LANDS OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTION 87-1-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the department. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the department.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures

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authorized to be made by the department under the terms of this title. Those moneys shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

(4) All money collected or received from fines and forfeited bonds relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in an earmarked revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the trust and legacy fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation."

Approved April 16, 1981.

CHAPTER NO. 389

AN ACT SETTING PENALTIES FOR FRAUDULENTLY OBTAINING DANGEROUS DRUGS; AMENDING SECTION 45-9-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-106, MCA, is amended to read:

"45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. *(1)* A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

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(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years;

(b) upon his second conviction, be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years."

Approved April 16, 1981.

CHAPTER NO. 390

AN ACT TO ESTABLISH A WORK EXPERIENCE AND TRAINING PROGRAM TO PROVIDE RECIPIENTS OF AFDC PAYMENTS AN OPPORTUNITY TO CONTRIBUTE THEIR EFFORTS TO SOCIETY IN RETURN FOR ASSISTANCE RECEIVED AND TO EXPLORE THE FEASIBILITY OF ESTABLISHING SUCH A PROGRAM TO INCLUDE RECIPIENTS OF OTHER FORMS OF PUBLIC ASSISTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [this act] is to establish a work experience and training program to be coordinated, whenever fiscally advantageous, with the federal WIN program to provide recipients of AFDC payments an opportunity to contribute their efforts to society, to improve their skills and increase their employment opportunities, to promote their self-sufficiency, and to explore the feasibility of expanding this program to include recipients of other forms of public assistance.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "AFDC" means aid to families with dependent children, as defined in the federal Social Security Act, 42 U.S.C. 601 through 626.

(2) "Board" means the board of social and rehabilitation appeals provided for in 2-15-2203.

(3) "Departments" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22, and the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Program" means the work experience and training program established under [this act].

(5) "Project" means a place, approved by the departments, at which a recipient of AFDC payments may receive work experience or training.

(6) "WIN" means the federal work incentive program provided for in 42 U.S.C. 630 through 644.

Section 3. **Departments to establish program.** The departments shall work jointly to establish a program in which an employable or potentially employable person may be required to participate as a condition of eligibility for AFDC payments. AFDC payments shall continue to be paid

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to such a person by the same agencies authorized to make such payments prior to [the effective date of this act], pursuant to Title 53, chapter 4, and regulations under WIN. The departments may jointly or individually enter into agreements with governmental units or agencies or nonprofit agencies to establish projects to effectuate this program. The departments shall, to the extent practicable, establish the program on a statewide basis.

Section 4. **Exemptions.** A person is exempt from mandatory participation in the program if he is:

(1) under 16 years of age;

(2) enrolled in and attending school full time when attendance is appropriate and 16 but not yet 21 years of age;

(3) ill or significantly and substantially incapacitated if it has been determined by the department, on the basis of medical evidence or on another sound basis, that the illness or incapacitation is serious enough to temporarily or permanently prevent the person from engaging in a work experience or training project;

(4) the caretaker in the home of a household member who requires the person's presence in the home on a substantially continuous basis as determined by a physician or a licensed or certified psychologist. Only one member of a household may claim this exemption.

(5) the mother, the father, or other caretaker relative of a child under the age of 6. Only one member of a household may claim this exemption.

(6) 65 years of age or older; or

(7) for any other reason exempt from participating in the WIN program pursuant to federal regulations.

Section 5. **Suitability of project.** A project established under [this act] may not be used to supplant or perform any work ordinarily performed by:

(1) a regular employee, whether paid or voluntary; or

(2) a regular employee whose position is vacant due to a labor strike or a lockout currently in active progress.

Section 6. **Disqualification from public assistance — right of appeal.** (1) If the departments or their authorized designees determine that a person required to participate in the program has failed or refused to do so or has failed to comply with the rules established under [section 7], that person, upon written notice by one of the departments or its authorized designee, shall be disqualified from receiving AFDC payments. The termination of AFDC payments for any person may not affect AFDC payments or any other form of public assistance received by other members of the same household.

(2) Upon written notification of disqualification, an affected person may appeal to:

(a) the board for a fair hearing, pursuant to Title 53, chapter 2, part 6; or

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(b) the department of labor and industry for redress under the WIN adjudication process, pursuant to CFR part 56 and 45 CFR part 1398.

Section 7. **Adoption of rules.** (1) The departments jointly shall adopt rules for:

(a) the determination of suitable projects;

(b) the determination of employability;

(c) registration and participation in the program;

(d) the determination of disqualification for AFDC payments and subsequent reeligibility of persons who fail to comply with the provisions of [this act] and rules adopted under [it];

(e) reporting and other responsibilities of the sponsoring project;

(f) hearing procedures required under [section 6], and the determination of which appeal process is appropriate for the recipient; and

(g) the administration of the program and the delegation of responsibilities between the departments.

Section 8. **Compliance with federal requirements authorized.** The departments are authorized to comply with such federal requirements and to adopt such methods of administration as may be necessary under WIN or similar federal programs to obtain federal funds in the maximum amount and most advantageous proportion possible.

Section 9. **Departments to make recommendations.** The departments shall make recommendations to the 48th legislature as to the feasibility of expanding the program to include recipients of other forms of public assistance. The departments' recommendations may be accompanied by suggested legislation necessary to implement the recommendations made.

Section 10. **Conflict with federal law.** If any portion of the program is found to conflict with federal law or rules, that portion may be suspended.

Approved April 16, 1981.

CHAPTER NO. 391

AN ACT TO PROVIDE FOR THE CREATION AND OPERATION OF RODENT CONTROL DISTRICTS; REPEALING SECTIONS 7-22-2201 THROUGH 7-22-2206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 19], unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the rodent control board for a district.

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(2) "Department" means the department of livestock.

(3) "District" means a rodent control district created under the provisions of [sections 1 through 19].

(4) "Fund" means the rodent control district fund authorized by [section 10].

(5) "Governing body" means the governing body specified in the alternative form of government adopted by a county.

(6) "Rodent" means Columbia ground squirrel (Citellus columbianus), Richardson ground squirrel (Citellus richardsonii), Aramatus ground squirrel (Citellus aramatus), thirteen-striped ground squirrel (Citellus triecemlineatus), pocket gopher (Thomomys, various species), field mice (Microtus, various species), and prairie dog (Cynomys ludovicianus).

Section 2. **Application to state lands.** [Sections 1 through 19] apply to lands owned by the state.

Section 3. **Rodent control districts authorized.** The governing body of a county may create a district as provided in [sections 1 through 19]. A district may not contain any city or town.

Section 4. **Petition to create district — hearing.** (1) The creation of a district may be initiated only by a petition:

(a) signed by at least 51% of the owners of land within the proposed district;

(b) submitted to the governing body of the county; and

(c) accompanied by sufficient funds to defray the cost of giving notice as required by [section 5].

(2) The petition shall set forth the boundaries of the proposed district.

(3) Upon receipt of the petition, the governing body shall set a date for a hearing on the petition. The hearing must be held within 3 weeks of receipt of the petition.

Section 5. **Notice of hearing.** Upon setting a date for the hearing, the governing body shall give notice of the hearing in the following manner:

(1) notice is to be sent by certified mail to each owner of land within the proposed district at the last-known address as shown in the county records;

(2) notice is to be posted in at least three public places within the proposed district; and

(3) notice is to be published in at least two issues of a newspaper of general circulation in the proposed district, with at least 7 days between publication, and the first publication must be at least 10 days before the hearing date.

Section 6. **Objection to district.** (1) At any time up to and including the date of the hearing, a landowner may file written objection to the creation of the district with the county clerk. The county clerk shall note the

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time of receipt on the written protest and shall compute the percentage of land in the proposed district represented by the protesting landowner.

(2) If the owners of at least 51% of the land in the proposed district file written objections with the county clerk, the district may not be created.

Section 7. **Hearing — decision.** (1) On the date set for the hearing, the governing body shall hear comments on the proposed district. If objections have been filed by owners of at least 51% of the land within the district, the governing body shall deny the petition request and may not create the district. Prior to creating a district, the governing body shall make a finding that creation of the district is in the best interests of the district lands and residents. The decision on whether to grant or deny the petition request shall be made within 10 days of the hearing.

(2) The decision is to be made by an order recorded in the minutes of the governing body. If the district is to be created, the order shall state the name of the district, describe the district boundaries, and provide any other information needed to describe the land included within the district.

(3) A landowner within the proposed district after the initial boundaries have been established may, by petitioning the board of county commissioners have all or a portion of the lands owned by himself removed from consideration for inclusion within the district. This landowner must, however, agree in writing to control rodents on his land within a 250 yard buffer zone of the district boundary.

Section 8. **Rodent control board.** The county weed board appointed under 7-22-2103 shall serve as the rodent control board.

Section 9. **Board powers.** The board may:

(1) develop and administer a program for the abatement and alleviation of rodent pest conditions within the district;

(2) employ such assistants and employees as are necessary;

(3) purchase or lease such equipment, material, or services as are considered necessary for an effective control program;

(4) sell or lease such equipment, material, or services to district landowners or residents as are considered necessary to implement the rodent abatement program;

(5) cooperate with any corporation, association, group, individual, or state or federal agency in rodent abatement programs;

(6) receive gifts or grants for the implementation of a rodent abatement program; and

(7) enter district lands in order to survey and study conditions and to implement a rodent abatement program.

Section 10. **Rodent control fund.** (1) The governing body shall establish a special fund, to be known as the rodent control district fund, for each district in the county. Money in the fund may be expended only

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for district administrative costs and the expenses of establishing and implementing a rodent abatement program.

(2) The county treasurer is the administrator of the fund and shall draw warrants on the fund by order of the governing body. Warrants shall be ordered by the governing body when so requested by the board.

Section 11. **Mill levy authorized.** To administer and implement a rodent abatement program, the governing body may levy a tax, not to exceed 2 mills, on the taxable value of the horticultural, farming, grazing, forest, and railroad lands within the district. The proceeds of the levy are to be placed in the district fund.

Section 12. **Financial operation.** (1) Material, equipment, and services purchased or leased by the board are to be paid for by warrants drawn on the fund.

(2) Payment received for material, equipment, and services supplied by the board is to be deposited in the fund. Reimbursement payments as provided for in [section 14] and penalties collected under [section 15] are to be deposited in the fund.

Section 13. **Implementation of rodent control.** (1) Whenever the board has reason to believe a rodent control problem exists, it shall inspect the affected land and may issue an order to the landowner to take the appropriate action. The order to the landowner may only require that affected lands be treated within a 250 yard buffer zone of the adjacent district lands.

(2) If the order is not obeyed in the time specified in the order, the board shall take the necessary steps to control the rodent problem. The expenses of the board in carrying out these measures shall be paid from the fund by the governing body.

Section 14. **Reimbursement of fund.** (1) Whenever the board has undertaken rodent control pursuant to [section 13], the landowner shall reimburse the fund for the expenses related to rodent control on his land. The board may, by written contract with the landowner, agree to extend the reimbursement over a period not to exceed 5 years.

(2) The agreement may provide for the reimbursement payments to be collected with property taxes, and in this case, the board shall inform the county clerk of the lands to be charged and the amount to be placed on the tax notice. Upon receipt of the payment, the county clerk shall deposit it in the fund.

Section 15. **Penalty.** (1) Any person who interferes with the board or its employees or agents is subject to a civil penalty not to exceed $100. The board may institute a court action to recover the penalty.

(2) Penalties assessed under this section are to be deposited in the fund.

Section 16. **Enlargement of district.** A district may be enlarged upon presentation of a petition signed by at least 51% of the owners of the land in the area proposed to be annexed to the district. The provisions

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of [sections 4 through 7] apply to the annexation petition, with the term "district" in those sections taken to mean the area proposed to be added.

Section 17. **Dissolution of a district.** (1) Upon receipt of a petition signed by the owners of at least 51% of the land in the district and after a hearing on the petition, a district may be dissolved by order of the governing body. Notice of the hearing is to be given by posting notice in at least three public places in the district and by publishing notice at least once in a newspaper of general circulation in the district. If the governing body finds it to be in the best interest of the district lands and residents to terminate the district, the governing body shall so order.

(2) The dissolution order shall provide for a termination date and for liquidating the district assets and liabilities. Any money remaining in the district fund after all assets and liabilities have been liquidated shall be transferred to the county general fund.

Section 18. **Multicounty districts.** A multicounty district may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, between the governing bodies of the counties involved.

Section 19. **Leased land.** Lessees of land within the district are liable for assessments and levies for rodent control and must comply with [sections 13 and 14] unless the lease specifically forbids rodent control through chemical or other means.

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Repealer.** Sections 7-22-2201 through 7-22-2206, MCA, are repealed.

Approved April 16, 1981.

CHAPTER NO. 392

AN ACT TO EXEMPT A PERSON RECEIVING A PERMIT FOR THE MOVEMENT OF AGRICULTURAL PRODUCTS FROM SINGLE TRIP PERMIT FEES; AMENDING SECTIONS 61-10-107 AND 61-10-144, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross axle weight — permit required. (1) The department of highways may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of $10, specifiying highway routings, the operation of a vehicle having two but not more than nine

axles if the maximum single axle load is 20,000 pounds and if no two consecutive axles more than 40 inches or less than 96 inches apart carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. The maximum gross weight allowed on a vehicle or combination so authorized by this special permit shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet, and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

(2) A special permit issued under subsection (1) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(3) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 2. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — seven percent allowance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 7%. In the event the vehicle or combination of vehicles is not in excess of the allowable weight limitations by more than 7%, the department may issue a single trip permit for the fee of $10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations in excess of 7% are subject to the fines provided in 61-10-145, and all loads in excess of 7% must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(2) may move over a highway, except any highway which is part of the federal aid interstate system, within a 50 mile radius of the harvested field to the point of first unloading, without incurring

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the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. No single trip permit as required in subsection (2) shall be applicable to such vehicle or combination of vehicles. When such vehicles or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed shall apply to that portion of the load above the legal limit."

Section 3. **Effective date.** This act is effective on July 1, 1981.

Approved April 16, 1981.

CHAPTER NO. 393

AN ACT TO CLARIFY THE QUALIFICATIONS THAT A NEWSPAPER MUST HAVE IN ORDER TO BE ELIGIBLE TO BID ON COUNTY PRINTING CONTRACTS; AMENDING SECTION 7-5-2411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2411, MCA, is amended to read:

"**7-5-2411. County printing contract.** (1) Except as provided in subsection (2), the county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be *one that is published in the county and of general bona fide and paid circulation with the second-class mailing privilege and has been* published continuously *as such at least once a week* in the county for the 12 months preceding the awarding of the contract.

(2) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class, the county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least 1 year.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms

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qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing."

Approved April 16, 1981.

CHAPTER NO. 394

AN ACT INCREASING THE MAXIMUM SENTENCE FOR CRIMINAL VIOLATIONS OF THE MONTANA SECURITIES ACT AND EXTENDING THE TIME FOR CRIMINAL PROSECUTIONS THEREUNDER; AMENDING SECTION 30-10-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-306, MCA, is amended to read:

"30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than *10* years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than *8* years after the alleged violation*; however, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.*

(2) The commissioner may refer such evidence as may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) Nothing in parts 1 through 3 of this chapter limits the power of the state to punish any person for any conduct which constitutes a crime."

Approved April 16, 1981.

CHAPTER NO. 395

AN ACT TO REVISE THE GUIDELINES FOR THE STATE BOARD OF INVESTMENTS; AND AMENDING SECTIONS 17-6-201, 17-6-211, AND 19-10-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The uniform investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds

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shall be administered by the board of investments in accordance with the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, *and preservation of purchasing power of capital during periods of sustained high monetary inflation.*

(2) All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments has the sole authority to invest state funds. No other agency may invest state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(4) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made; and

(d) prepare the claim to pay for the investment.

(5) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(6) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 2. Section 17-6-211, MCA, is amended to read:

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"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but

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the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed *50%* of the book value of such fund or would cause the stock of one corporation to exceed *2%* of the book value of such retirement fund;

(d) subsection (c) *does* not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Section 3. Section 19-10-203, MCA, is amended to read:

"19-10-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess

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to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204."

Approved April 16, 1981.

CHAPTER NO. 396

AN ACT AMENDING SECTION 19-4-802, MCA, TO REDUCE THE MINIMUM EARLY RETIREMENT AGE IN THE TEACHERS' RETIREMENT SYSTEM FROM 55 YEARS TO 50 YEARS AND TO REVISE THE FORMULA FOR CALCULATING THE EARLY RETIREMENT ALLOWANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-802, MCA, is amended to read:

"19-4-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of *50* may retire from service and be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-4-804(1) and (2), with the exception that the allowance will be reduced *as follows:*

(a) by ½ of 1% multiplied by the number of months *up to a maximum of 60 months* by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service; *and*

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service."

Approved April 16, 1981.

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CHAPTER NO. 397

AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO BE SUBJECT TO A PUBLIC HEARING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

Section 2. **Local zoning regulations to apply to agencies.** Whenever an agency proposes to use public land contrary to local zoning regulations a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in Title 76, chapter 2, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

Approved April 16, 1981.

CHAPTER NO. 398

AN ACT TO REMOVE THE BOND REQUIREMENT FOR PERSONS WHO ARE PROTECTIVE PAYEES FOR RECIPIENTS OF PUBLIC ASSISTANCE; AMENDING SECTIONS 53-2-608 AND 53-4-244, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-608, MCA, is amended to read:

"**53-2-608. Method of issuing assistance grants.** (1) Checks in payment of public assistance, with the exception of general relief, shall be issued by the department of social and rehabilitation services upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department, and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee, and the original monthly payment shall be from the state public assistance accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

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(2) Whenever the department of social and rehabilitation services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of *public assistance* has, by reason of any physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual."

Section 2. Section 53-4-244, MCA, is amended to read:

"53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules established by the department of social and rehabilitation services."

Approved April 17, 1981.

CHAPTER NO. 399

AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADOPT MORE RESTRICTIVE ELIGIBILITY CRITERIA FOR MEDICAL ASSISTANCE; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. *(1)* Medical assistance *may* be granted *to a person* who *resides* in the state of Montana, including *a resident* temporarily absent from the state and *who meets the requirements of one or more of the following categories:*

(a) *he receives* all or part of *his* income from federally *funded supplemental security income assistance or* aid to dependent children;

(b) upon application, *he* would be eligible for financial assistance under any one of the federally aided programs referred to above;

(c) *he* would be entitled to financial assistance under one of the federally aided categories except that *he does* not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(d) *he is* in *a* medical *institution* and if *he* were no longer in such institution *he* would be eligible for financial assistance under one of the above programs;

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(e) *he is* under 21 years of age and *meets* the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;

(f) *he is* under 21 years of age and in foster care under the supervision of the state;

(g) *he has* income less than 133 ⅓% of the amounts specified as maximum income levels for federally aided categories of assistance;

(h) *he is* under 21 years of age and medically needy, as defined by the department of social and rehabilitation services; or

(i) *he is* under 21 years of age, *was* in foster care under the supervision of the state, and *has* been adopted as *a* "hard-to-place" *child.*

(2) The department of social and rehabilitation services may by rule establish more restrictive property ownership eligibility criteria than required by federal law for federally aided categories of public assistance."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1981.

CHAPTER NO. 400

AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SET CRITERIA FOR DETERMINING REASONABLE AND NECESSARY EXPENDITURES BY COUNTIES APPLYING FOR GRANTS-IN-AID; AMENDING SECTION 53-2-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-323, MCA, is amended to read:

"53-2-323. Grants from state funds to counties. A county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

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(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) *that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.*

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the

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department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department."

Approved April 17, 1981.

CHAPTER NO. 401

AN ACT AMENDING SECTIONS 16-4-301 AND 16-4-501, MCA, TO ALLOW A SPECIAL PERMITTEE TO SELL TABLE WINE AS WELL AS BEER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-301, MCA, is amended to read:

"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer *and table wine* to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 10 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer *and table wine* except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer *and table wine* or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

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(c) The special permit issued shall be for a 24-hour period only ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year."

Section 2. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer *and table wine* is sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer *and table wine* only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $400;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest

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entrance of the premises to be licensed to the nearest boundary of such city, $650;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $800;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee of $800.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1981.

CHAPTER NO. 402

AN ACT TO GENERALLY REVISE THE ALTERNATIVE ENERGY GRANT PROGRAM; AMENDING SECTIONS 90-4-106 AND 90-4-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-106, MCA, is amended to read:

"90-4-106. Criteria for grant awards. The department may award grants to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period not exceeding 1 year, and the department may not commit itself to spending funds anticipated to be available more than 1 year after the grant period begins. The department may give an applicant a statement of intent to renew its support of his work, subject to the availability of funds and such other conditions as the department may express.

(2) The department may give preference to projects which are also supported by grants from the federal government or other persons provided the grants are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy research development and demonstration account for matching moneys in order to support more substantial research.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public and shall not become the private property of or under the exclusive control of any one company or person.

(6) The department *may* expend or commit available alternative energy research, development, and demonstration funds. *The department may commit funds for demonstration purposes only* when in its judgment such expenditures or commitments *have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:*

(a) previous commitments of a similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the geographic location of the proposed demonstration project;

(c) the proposed demonstration project would not further the purpose of this part."

Section 2. Section 90-4-107, MCA, is amended to read:

"90-4-107. Biennial report. The department *shall monitor the grants awarded and* shall report its expenditures and other *information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded* under this part to the legislature at the beginning of each regular legislative session."

Section 3. **Oversight function of environmental quality council.** The department shall submit periodic reports to the environmental quality

council established in 5-16-101 for review and evaluation. The environmental quality council shall make such recommendations as it considers necessary to assure the greatest possible benefit of the program to the people of the state as a whole. Such recommendations may include proposals for legislation.

Section 4. **Coordination instruction.** If Senate Bill 141 is passed and approved, section 4 of Senate Bill 141 pertaining to the awarding of loans under 90-4-106 shall be subject to the provisions of House Bill 398.

Approved April 17, 1981.

CHAPTER NO. 403

AN ACT TO RAISE THE CEILING ON RATES CHARGED BY METROPOLITAN SANITARY AND/OR STORM SEWER DISTRICTS; AMENDING SECTION 7-13-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-144, MCA, is amended to read:

"7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners shall have authority, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, not to exceed *$10* per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, not to exceed *$10* per unit user per year, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156."

Section 2. **Coordination.** If house bill 790 introduced in the 47th legislature is passed and approved, this act becomes void and of no effect on the effective date of house bill 790.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1981.

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CHAPTER NO. 404

AN ACT ALLOWING SECURITY GUARDS EMPLOYED BY THE MONTANA UNIVERSITY SYSTEM WHO MEET MINIMUM TRAINING STANDARDS TO CARRY FIREARMS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 20-25-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-324, MCA, is amended to read:

"20-25-324. Firearms. Security guards *who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may* carry firearms *in accordance with policies established by the board of regents:*

(1) between 5 p.m. and 8 a.m.; and

(2) whenever guarding money or other valuables."

Approved April 17, 1981.

CHAPTER NO. 405

AN ACT TO CREATE A MONTANA ALFALFA SEED COMMITTEE TO RESEARCH AND ADVERTISE THE STATE'S ALFALFA SEED INDUSTRY; ESTABLISHING ITS FUNCTIONS AND METHODS OF OPERATION; LEVYING AN ASSESSMENT ON ALFALFA SEED PRODUCERS; AND APPROPRIATING ITS PROCEEDS TO THE COMMITTEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Montana alfalfa seed committee — composition — allocation.** (1) There is a Montana alfalfa seed committee composed of seven members appointed by the governor. The director of the department of agriculture or his authorized representative shall be an ex officio, nonvoting member of the committee.

(2) Each of the appointed members shall be a citizen of Montana actively engaged in the growing of alfalfa seed within the state or deriving a substantial portion of his income from handling, packing, shipping, buying, or selling alfalfa seed or acting as a broker or factor of alfalfa seed. These qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment may be submitted to the governor by the Montana alfalfa seed association, the Montana seed trade association, the Montana seed growers association, and any other organization representing alfalfa seed growers or dealers. Names of nominees shall be submitted at least 91 days before the expiration of a committee member's

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term. The governor shall appoint members from among the persons nominated.

(4) The appointed members shall serve staggered terms of 3 years. The initial appointments shall be as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

Section 2. **Short title.** [Sections 2 through 14] may be cited as the "Alfalfa Seed Industry Act".

Section 3. **Findings — purpose.** (1) The legislature finds that:

(a) it is in the best interest of all the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed;

(b) economic waste threatens the alfalfa seed industry in Montana because of lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed grown in the state and because of lack of facilities and funds for research to:

(i) develop and improve control measures for diseases and pests which attack alfalfa seed pollinators;

(ii) improve alfalfa seed growing culture; and

(iii) disseminate information to the growers; and

(c) it is in the interest of the people and general welfare of the state that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting, and marketing of alfalfa seed.

(2) The purpose of [sections 2 through 14] is to promote the general welfare of the people of the state by improving the culture and production of and expanding the market for alfalfa seed grown in the state.

Section 4. **Definitions.** As used in [sections 2 through 14] the following definitions apply:

(1) "Committee" means the Montana alfalfa seed committee established in [section 1].

(2) "Dealer" means any person, partnership, association, corporation, cooperative, or other business unit or device that first handles, packs, ships, buys, and sells alfalfa seed or that acts as sales or purchasing agent, broker, or factor of alfalfa seed.

(3) "Grower" means any landowner personally engaged in growing alfalfa seed, a tenant personally engaged in growing alfalfa seed, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper, or any and all other business units, devices, and arrangements that grow alfalfa seed or are engaged in the pollination of alfalfa seed.

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(4) "Handled in the primary channels of trade" means the time when any alfalfa seed is delivered under a sales contract, sold, or delivered for shipment and sale.

Section 5. **Powers of the committee.** The committee may:

(1) provide, through the department of agriculture, for the administration and enforcement of [sections 2 through 14];

(2) enter into contracts in the name of the committee;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations required for the proper carrying out of the provisions of [sections 2 through 14];

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct a research program to improve the quality of alfalfa seed, develop and improve control measures for disease and pests which attack alfalfa and alfalfa seed pollinators, improve alfalfa growing culture, disseminate such information among the growers and dealers of the state, and make such research contracts and other agreements as may be necessary;

(6) plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana alfalfa seed and make such publicity and sales promotion contracts and other agreements as may be necessary;

(7) in cooperation with the director of the department of agriculture, establish and maintain the executive offices of the committee at any place within the state, which designated place may be changed at the discretion of the director and the committee;

(8) recommend rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(9) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, engaged in work or activities similar to the work and activities of the committee and enter into contracts or agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of these objectives; and

(10) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with [sections 2 through 14], which may be specified as a condition of any grant, donation, or gift.

Section 6. **Compensation — per diem.** Each committee member is entitled to $25 compensation for each day he is engaged in the transaction of official business, together with actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503.

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Section 7. **Liability of state.** The state of Montana is not liable for the acts or omissions of the committee or any member, officer, agent, or employee thereof.

Section 8. **Assessment on alfalfa seed.** (1) There is hereby levied upon all alfalfa seed grown in this state and sold through commercial channels an assessment of ½ of 1% of the grower's price received at the point of first sale.

(2) If it appears from an investigation that the revenue from the assessment levied under subsection (1) is inadequate to accomplish the purposes of [sections 2 through 14], the committee shall file with the director of agriculture a report showing the necessity of the industry, extent of public convenience, interest, and necessity, and probable revenue from the additional assessment desired to be levied. The director of agriculture may thereupon increase the assessment to a sum not to exceed 1% of the grower's price received at the point of first sale. No increase may be made prior to filing of the report and recommendation by the committee.

Section 9. **Payment of assessment.** All assessments levied and imposed under [section 8] must be paid to the department of agriculture by the person, either grower or dealer, by whom the alfalfa seed is first handled in the primary channels of trade and must be paid at such times as the department may by rule prescribe, but not later than 60 days from the date on which the grower received payment for the alfalfa seed. If the party first handling the alfalfa seed in the primary channels of trade is a person other than the grower, he may charge against or recover from the grower of such alfalfa seed the full amount of any assessment levied and imposed under [section 8].

Section 10. **Refund of assessment.** Any person who has paid assessments to the department may request the department to refund all or any portion of the assessment levied under the rules of the department and paid by the producer. All such requests must be in writing, filed not later than August 1 of each calendar year for the preceding crop year, and must be on forms to be available without cost to all producers who pay assessments.

Section 11. **Deposit and disbursement of funds — records — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under [section 8] and all other money received shall be deposited in the federal and private revenue fund.

(2) All money referred to in subsection (1) of this section may be used only for the payment of expenses incurred in carrying out the provisions of [sections 2 through 14]. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121; however, the costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under [sections 11, 13, and 14] not immediately required for the purposes of [sections 2 through 14] must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2.

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(4) Money received under [sections 11, 13, and 14] is appropriated to the committee for the purposes of [sections 2 through 14].

Section 12. **Records required.** Every dealer shall maintain accurate records of all alfalfa seed handled, packed, shipped, or processed by him. The records shall be in such form and contain such information as the department may by rule prescribe, shall be preserved for a period of 2 years, and are subject to inspection at any time upon request of the department or its agents.

Section 13. **Penalty for nonpayment.** Any grower or dealer who fails to make collection or pay any assessment within the time required pursuant to [sections 2 through 14] is subject to a penalty of 5% of the amount of the assessment determined to be due, as provided in [sections 2 through 14], plus 1% of such amount for each month of delay or fraction thereof after the expiration of the month after such assessment became due. The penalty must be paid to the department and disposed of as provided in [section 11].

Section 14. **Penalty.** In addition to the penalty specified in [section 13] any person who violates or aids in a violation of any of the provisions of [sections 2 through 14] or any of the rules or orders of the department adopted under [sections 2 through 14], upon conviction thereof, is punishable by a fine not to exceed $500. All fines collected shall be deposited as provided in [section 11].

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Codification instruction.** (1) Section 1 is intended to be codified in Title 2, chapter 15, part 30.

(2) Sections 2 through 14 are intended to be codified as Title 80, chapter 11, part 3.

Approved April 17, 1981.

CHAPTER NO. 406

AN ACT TO REMOVE SEED POTATO PRODUCTS FROM THE PRODUCE WHOLESALE LICENSING PROVISIONS; AMENDING SECTION 80-3-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-3-601, MCA, is amended to read:

"80-3-601. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

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(1) "Dealer at wholesale" means a person who buys to sell at wholesale or contracts to buy to sell at wholesale or who handles at wholesale on account of or as agent for another.

(2) "Person" means an individual, group of persons, exchange, firm, partnership, corporation, or association.

(3) "Produce" means the natural products of the farm and includes but is not limited to natural products of the orchard, vineyard, garden, and apiary, raw and manufactured (except grains, dairy products, livestock, poultry, and poultry products), when handled for the purpose of resale. *The term "produce" does not include seed potatoes.*"

Approved April 17, 1981.

CHAPTER NO. 407

AN ACT TO REMOVE THE REQUIREMENT THAT THE VALUE OF STATE-OWNED COAL BE DEFINED AS THE VALUE BEFORE TAXES FOR ROYALTY PURPOSES; REPEALING SECTION 15-35-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 15-35-109, MCA, is repealed.

Approved April 17, 1981.

CHAPTER NO. 408

AN ACT TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS TO ENFORCE THE PROVISIONS OF TITLE 15, CHAPTER 31, MCA, RELATING TO THE CORPORATE LICENSE TAX, AND TO COLLECT UNPAID TAXES UNDER THAT CHAPTER, WITH EXCEPTIONS FOR FRAUD AND FAILURE TO FILE; AND PROVIDING FOR RETROACTIVE APPLICATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statute of limitations.** (1) Except as provided in subsection (2), an action to collect a past-due tax imposed pursuant to this chapter or to enforce a provision of this chapter must be brought within 5 years of the due date of the tax or the date of filing the return, whichever is later.

(2) Whenever a return is required to be filed and the taxpayer fails to file the return, an action to collect the tax may be brought at any time. Whenever a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

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Section 2. **Codification.** Section 1 is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to section 1.

Section 3. **Applicability.** This act applies to tax years beginning after December 31, 1980, and to all prior tax years for which the liability for taxes has not been discharged by statute.

Approved April 17, 1981.

CHAPTER NO. 409

AN ACT TO REVISE THE MOTOR VEHICLE MANDATORY LIABILITY PROTECTION LAW BY REQUIRING CERTIFICATION OF POSSESSION OF INSURANCE AND CARRYING OF AN INSURANCE CARD ISSUED BY AN INSURANCE CARRIER; BY INCREASING THE PENALTIES; AND AMENDING SECTIONS 61-6-302 AND 61-6-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) Before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer *that he possesses* an automobile liability insurance policy, a certificate of self-insurance, *or* a posted indemnity bond, or *that he is eligible* for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the division of motor vehicles. The division may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. *Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities punishable as provided in 45-7-203.*

(2) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the division and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

(3) Every person shall carry in a motor vehicle being operated by him an insurance card approved by the division but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest."

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Section 2. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to [61-6-302] or has previously posted an indemnity bond with the [commissioner of insurance] as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable *by a fine not to exceed $250.*"

Approved April 17, 1981.

CHAPTER NO. 410

AN ACT TO RAISE THE STATE MINIMUM WAGE; AMENDING SECTION 39-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-404, MCA, is amended to read:

"39-3-404. Minimum wage. (1) Except as may otherwise be provided pursuant to this part, every employer shall pay to each of his employees wages at a rate not less than provided in subsections (1)(a) and (1)(b), save and except for farm workers as herein defined:

(a) *$2.50* an hour for the first year from July 1, *1981*;

(b) *$2.75* an hour for the second year from July 1, *1981*, and thereafter.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation

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shall constitute a minimum wage and shall not be less than the following rates:

(i) *$575* a month for the first year from July 1, *1981*;

(ii) *$635* a month for the second year from July 1, *1981*, and thereafter."

Approved April 17, 1981.

CHAPTER NO. 411

AN ACT TO REVISE AND SIMPLIFY THE PROCESS OF ADDING CONTIGUOUS LAND IN AN UNINCORPORATED AREA TO A SEWER DISTRICT WHEN THE BOARD OF DIRECTORS DETERMINES THERE IS EXCESS CAPACITY; AMENDING SECTION 7-13-2341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2341, MCA, is amended to read:

"7-13-2341. Addition of land to district. (1) *Except as provided in subsection (5), any* portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, within 70 days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

(5) If the board of directors determines that a district has a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners, expand the district to include land in an unincorporated area, to the extent of excess capacity, without complying with subsections (1)

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and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1981.

CHAPTER NO. 412

AN ACT TO DEFINE ELECTROLOGY TO MEAN REMOVAL OF SUPERFLUOUS HAIR WITH AN ELECTRIFIED NEEDLE; AMENDING SECTION 37-32-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-32-102, MCA, is amended to read:

"**37-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of professional and occupational licensing.

(4) "Electrology" means the study and professional practice of *permanently* removing superfluous hair by destroying the hair roots by passage of an electric current *with an electrified needle.* Electrology as defined in this chapter shall include electrolysis and/or thermolysis. *Electrology does not include the practice of pilethermology which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.*"

Approved April 17, 1981.

CHAPTER NO. 413

AN ACT TO IMPOSE ADDITIONAL CONSTRAINTS ON THE MAKING OF RENEWABLE RESOURCE DEVELOPMENT GRANTS OR LOANS; TO ESTABLISH THE USES FOR WHICH SUCH GRANTS OR LOANS MAY BE PROPOSED; AMENDING SECTION 90-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-103, MCA, is amended to read:

"**90-2-103. Constraints on developments generally.** *(1)* Renewable resource developments shall, whenever practicable, be multiple-use

projects and shall not significantly diminish the quality of existing public resources such as land, air, water, fish, wildlife, and recreational opportunities.

(2) Grants or loans under this part may be made only for renewable resource development programs that can be shown to provide a tangible return to the state or its citizens.

(3) To the extent practicable, all work on development projects or programs under this part shall be performed by contract with private persons or organizations, pursuant to all requirements of law for awarding of such contracts."

Section 2. **Allocation of grants and loans.** (1) Subject to the requirements of 90-2-103, loans or grants may be proposed under this part for any worthwhile project for the conservation, management, utilization, development, or preservation of the land, water, timber, fish, wildlife, or other renewable resources of the state. Of the total amount of grants and loans proposed for each biennium, at least:

(a) 15% shall be designated for timber stand improvement or related purposes;

(b) 40% shall be designated for water development projects;

(c) 15% shall be designated for improvements on agricultural lands;

(d) 10% shall be designated for conservation districts for development of their water reservations; and

(e) 20% shall be designated for such other projects as the department considers appropriate.

(2) If qualified applications are not received by the department to meet the allocations set forth in subsection (1), the remaining allocation shall be designated for qualified projects in (a), (b), (c), (d), or (e) of subsection (1).

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 90, chapter 2, part 1.

Approved April 17, 1981.

CHAPTER NO. 414

AN ACT TO INCREASE THE FEES CHARGED BY THE COUNTY CLERKS FOR RECORDING, FILING, AND COPYING SERVICES; REMOVING PROVISIONS THAT ARE OUTDATED; AMENDING SECTIONS 7-4-2631 AND 7-4-2632, MCA; AND REPEALING SECTION 7-4-2633, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim *or* millsite claim, including a certificate that the instrument has been recorded with seal affixed, *$6*;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, *$3*; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, *$2*;

(d) for filing and indexing each certificate of *fictitious name, $3*;

(e) for *filing of subdivision and townsite plats, $5 plus*:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, *25* cents;

(f) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(g) for a copy of a record or paper:

(i) for *the first page of any document, 50 cents, and 25 cents for each subsequent page*; and

(ii) for each certification with seal affixed, $1;

(h) for searching an index record of files of the office for each year when required in abstracting or otherwise, *50* cents;

(i) for administering an oath with certificate and seal, no charge;

(j) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(k) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; releases of oil, gas, and mineral leases; assignments of overriding royalties; executions; lis pendens; attachments; and all liens), 50 cents per index in excess of the first index contained in a single document;

(l) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(m) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, *$3*;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section *or* 7-4-2632, the same fee provided in this section *or* 7-4-2632 for a similar service;

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(o) for each copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents *to be put of record* shall pay the fees provided for in this section. These fees *must* be paid by a state agency on a monthly basis."

Section 2. Section 7-4-2632, MCA, is amended to read:

"7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge $2 for each page or fraction of a page of the instrument for *recording.*"

Section 3. **Repealer.** Section 7-4-2633, MCA, is repealed.

Approved April 17, 1981.

CHAPTER NO. 415

AN ACT TO PROVIDE THAT A DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING SECTIONS 46-8-101 AND 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel *as determined under the provisions of [section 2].* If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice may assign counsel to defend him."

Section 2. **Eligibility for court-appointed counsel.** (1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

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Section 3. **Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel.** The court shall inform the defendant that:

(1) if he makes a false statement under oath regarding his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the compensation and expenses incurred by his court-appointed counsel as a part of or a condition under his sentence should he be convicted of an offense.

Section 4. **Payment of costs of court-appointed counsel by defendant — condition of sentence.** (1) Under the provisions of 46-18-201, the court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his sentence.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

Section 5. **Time and method of payment of costs.** When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county or state agency responsible for the expenses of court-appointed counsel as provided for in 46-8-201.

Section 6. **Effect of nonpayment of costs.** (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment thereof or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why his default should not be treated as contempt of court and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his

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part to make a good faith effort to make the payment, the court may find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel shall be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

Section 7. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of costs of court-appointed counsel as provided under [section 4];

(vi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vii) any combination of the above;

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions *or conditions* during the period of suspended sentence. Such reasonable restrictions *or conditions* may include any of those listed in subsections (1)(a)(i) through *(1)(a)(vii)*.

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(c) impose a fine as provided by law for the offense;

(d) require payment of costs of court-appointed counsel as provided in [section 4];

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) *through (1)(e).*

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended."

Section 8. **Codification instruction.** Sections 2 through 6 are intended to be codified as an integral part of Title 46, chapter 8, and the provisions of Title 46, chapter 8, apply to sections 2 through 6.

Approved April 17, 1981.

CHAPTER NO. 416

AN ACT PERTAINING TO JOINT CUSTODY AWARDS UPON DISSOLUTION OF MARRIAGE; CONSIDERING THE BEST INTERESTS OF THE CHILD; AND ALLOWING THE NONCUSTODIAL PARENT ACCESS TO RECORDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Declaration of legislative intent — joint custody.** The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of [this act] is to establish certain guidelines for resolution of custody disputes.

Section 2. **Award of joint or separate custody.** In custody disputes involving both parents of a minor child, custody shall be awarded to the following according to the best interests of the child as set out in 40-4-212:

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(1) to both parents jointly pursuant to [section 3]. The court, in its discretion, may require the submission to the court of a plan for the implementation of the joint custody order; or

(2) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex. The court, in its discretion, may require the submission to the court of a plan for the implementation of the custody order.

Section 3. **Joint custody — modification — consultation with professionals.** (1) Upon application of either parent or both parents for joint custody, the court shall consider whether or not joint custody is in the best interests of a minor child. If the court declines to enter an order awarding joint custody the court shall state in its decision the reasons for denial of an award of joint custody.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may with the consent of both parties, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

Section 4. **Access to records by noncustodial parent.** Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

Section 5. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 40, chapter 4, part 2.

Approved April 17, 1981.

CHAPTER NO. 417

AN ACT TO PERMIT THE ESTABLISHMENT OF BUS STOPS IN PLACES IN WHICH STOPPING, STANDING, AND PARKING A VEHICLE ARE OTHERWISE PROHIBITED; AMENDING SECTION 61-8-354, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-354, MCA, is amended to read:

"61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) No person shall stop, stand, or park a

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vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrolman or traffic-control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official signs prohibit stopping.

(2) A public bus stop may not be established in the areas described in subsections (1)(a) through (c) and (e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government. Such a bus stop must be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of highways if the bus stop is to be established on a street or highway under its jurisdiction.

(3) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1981.

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CHAPTER NO. 418

AN ACT TO REQUIRE BOARD OF LAND COMMISSIONERS' APPROVAL OF LAND ACQUISITION BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTIONS 23-1-102 AND 87-1-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract, *for any of the purposes of this part,* may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available *and, if the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, until the board of land commissioners has specifically approved such acquisition.* The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part."

Section 2. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission *and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners,* may acquire by purchase, condemnation, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

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(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(3) Notwithstanding the provisions of 18-4-102, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Approved April 17, 1981.

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CHAPTER NO. 419

AN ACT TO PLACE METROPOLITAN SANITARY AND/OR STORM SEWER DISTRICTS UNDER THE REGULATORY AUTHORITY OF THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 7-13-112, 7-13-141, AND 7-13-144, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-112, MCA, is amended to read:

"7-13-112. County commissioners to administer district. (1) The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this part and shall have jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district, *subject to the regulation of the public service commission.* The *county* commission shall be responsible for the proper functioning and maintenance thereof.

(2) The *county* commission shall be responsible for the condition and maintenance of all publicly owned streets, alleys, land, parks, or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district."

Section 2. Section 7-13-141, MCA, is amended to read:

"7-13-141. Charges for services. (1) The board of county commissioners shall have authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters.

(3) The rates, charges, and rentals for services and benefits are subject to the general regulatory authority vested in the public service commission."

Section 3. Section 7-13-144, MCA, is amended to read:

"7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. *(1)* The board of county commissioners shall have authority *[subject to the provisions of [House Bill 765]]*, by resolution and after public hearing:

(a) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, to provide income and revenues adequate for the

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payment of the reasonable expense of operation and maintenance of the system;

(b) to fix and establish an additional charge, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(c) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

(2) The rates established pursuant to this section are subject to the general regulatory authority vested in the public service commission."

Section 4. **Role of public service commission unaffected.** Nothing contained in this part may be construed to change or affect the powers and the duties of the public service commission prescribed in Title 69, chapters 1 through 3.

Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 7, chapter 13, part 1, and the provisions of Title 7, chapter 13, part 1, apply to section 4.

Section 6. **Coordination with House Bill 765.** If House Bill 765 introduced in the 47th legislature is passed and approved:

(1) sections 1, 4, and 5 of this act are void and of no effect;

(2) the amendatory material added to 7-13-141, MCA, as subsection (3) in section 2 of this act relating to regulatory authority of the public service commission is void and of no effect; and

(3) the amendatory material added to 7-13-144, MCA, as new subsection (2) in section 3 of this act relating to the regulatory authority of the public service commission is void and of no effect and the code commissioner is authorized and instructed to internally renumber the subsections of section 7-13-144, MCA, accordingly.

(4) the bracketed material in section 3 relating to House Bill 765 is effective.

Section 7. **Effective date.** This act is effective on January 1, 1982.

Approved April 17, 1981.

CHAPTER NO. 420

AN ACT TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Parent-Child Legal Relationship Termination Act of 1981."

Section 2. **Purpose.** This act provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if

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the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this act is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.

Section 3. **Definitions.** As used in this [act], unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this [act] or in 40-6-124 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

Section 4. **Petition for termination — separate hearing — right to counsel — no jury trial.** (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a petition for termination of a parent-child relationship pursuant to this [act], parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) An attorney, who whenever possible shall be the child's previously appointed guardian ad litem, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The attorney shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Section 5. **Notice.** Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the

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petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

Section 6. **Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-124;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

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Section 7. **Review following termination.** (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. The guardian ad litem shall submit a written report to the court with recommendations to the court, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 8. **Effect of decree.** (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this [act] may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to [section 6].

Section 9. **Appeals.** Appeals of court orders or decrees made under this [act] shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

Section 10. **Codification instruction.** Sections 1 through 8 are intended to be codified as an integral part of Title 41, chapter 3.

Approved April 17, 1981.

CHAPTER NO. 421

AN ACT TO ESTABLISH EMPLOYEE COMPENSATION PLANS AND BENEFIT LEVELS, REVISE THE CLASSIFICATION APPEALS PROCEDURES, AND PROVIDE PAY SCHEDULES FOR FISCAL YEARS 1982 AND 1983; APPROPRIATING FUNDS THEREFOR; APPROPRIATING FUNDS FOR A PERSONNEL AND LABOR RELATIONS STUDY; AMENDING SECTIONS 2-18-101, 2-18-203, 2-18-301, 2-18-303, 2-18-311 THROUGH 2-18-315, AND 2-18-701 THROUGH 2-18-703, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 *and part 10* of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Board" means the board of personnel appeals established in 2-15-1705.

(3) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(4) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(5) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under provisions of 2-18-703.

(6) "Department" means the department of administration *created in 2-15-1001.*

(7) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(8) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(9) "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(10) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

(11) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(12) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(13) "Program" means a combination of planned efforts to provide a service.

(14) "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

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(15) "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months."

Section 2. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event adjustments are to be made to the classification specifications or criteria utilized for allocating positions in the classification specifications affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue collar, teachers, and liquor store clerks classification plans, which shall remain mandatory negotiable items under the Collective Bargaining Act.

(2) Employees and employee organizations will be given the opportunity to appeal *the allocation or reallocation of a position to a class. The grade assigned to a class is not an appealable subject under 2-18-1011 through 2-18-1013.*

(3) The period of time for which retroactive pay for a classification appeal may be awarded under parts 1 through 3 of this chapter or under 2-18-1011 through 2-18-1013 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on April 26, 1977."

Section 3. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, *1983*, the:

(a) pay schedules provided for in 2-18-311 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the *47th* legislature;

(b) pay levels provided for in 2-18-311 through 2-18-315 may not be increased through collective bargaining after adjournment of the *47th* legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the *47th* legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

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Section 4. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay *schedules* provided in 2-18-311 *indicate* the annual compensation for the fiscal year ending June 30, *1982*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay *schedules* provided in 2-18-312 *indicate* the annual compensation for the fiscal year ending June 30, *1983*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year *1982* shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of *1981*.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1983* shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year *1982*.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year *1982* or *1983*, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years *1982* and *1983*.

(ii) The compensation of each teacher on the first day of the first pay period in July, *1981*, shall be that amount which corresponds to his level of academic achievement and the next highest *step* from that occupied on June 30, *1981*.

(iii) The compensation of each teacher on the first day of the first pay period in July, *1982*, shall be that amount which corresponds to his level of achievement and the next highest *step* from that occupied on June 30, *1982*.

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(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, *1982*, and June 30, *1983*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1982* or *1983*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, *1982*, and June 30, *1983*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1982* or *1983*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 *through* 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, *1983*.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1981*, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1981*, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, *1981*.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 *through* 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 *through* 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop *programs* which will enable the department to mitigate problems associated with difficult recruitment,

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retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 5. Section 2-18-311, MCA, is amended to read:

"**2-18-311.** Pay *schedules* for fiscal year *1982 and 1983 shall be adjusted by the governor in a manner which will cost no more for pay raises than the appropriation contained in this bill.*"

Section 6. Section 2-18-701, MCA, is amended to read:

"**2-18-701. Definitions.** In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

(3) a seasonal employee, as defined in 2-18-601, who is scheduled to work 6 months or more a year;

(4) elected officials;

(5) officers and *permanent* employees of the legislative branch;

(6) judges and *permanent* employees of the judicial branch;

(7) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education*; and*

(8) temporary employees as defined in 2-18-601 who are scheduled to work more than 6 months a year or who work for a continuous period of more than 6 months or whose temporary status is defined through collective bargaining."

Section 7. Section 2-18-702, MCA, is amended to read:

"**2-18-702. Group insurance for public employees and officers.** (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

(2) State employees *and elected officials*, as defined in *2-18-701*, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue his warrant therefor to the insurer.

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(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor."

Section 8. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency as defined in 2-18-601 shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be *$70* per month for the fiscal year ending June 30, *1982*, and *$80* per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 9. **Appropriation.** (1) There is appropriated to the various state agencies listed in this section the money necessary to carry out the provisions of this act. The appropriations listed in this section are subject to the limitations, definitions, and provisions contained in the general appropriation act of 1981. No agency may exceed the appropriation listed in this section when carrying out the provisions of this act unless a budget amendment authorizing such an expenditure has been approved by an appropriate authority.

(2) The following money is appropriated from the general fund to the listed agencies:

	Fiscal Year 1982	Fiscal Year 1983
Legislative Auditor	$ 176,782	$ 278,577
Legislative Council	143,133	267,092
Legislative Fiscal Analyst	51,141	88,828
Environmental Quality Council	13,813	33,870
Totals	$ 384,869	$ 668,367

(3) There is appropriated to the office of budget and program planning $48,000,000 for the biennium ending June 30, 1983, from the general fund to carry out the provisions of this act as it pertains to judicial and executive branch agencies not including vocational-technical centers and community colleges. The office of budget and program planning is authorized

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to increase the expenditure authority of judicial and executive branch agencies, not including vocational-technical centers and community colleges, by $34,192,000 for the biennium ending June 30, 1983, from funds other than the general fund which accrue under provisions of law to the respective agencies to carry out the provisions of this act.

(4) There is appropriated to the department of administration $150,000 from the general fund for the biennium ending June 30, 1983. It is the intent of the legislature that this money be used for the purpose of funding a commission to study and make recommendations for change in the personnel and labor relations programs in Montana. Further, it is the intent of the legislature that members of the commission be selected from a diverse group that adequately represents the interests of the general public, labor, the legislature, and the executive branch.

Section 10. **Reversion of funds.** Appropriated funds not spent at the end of the fiscal year shall revert to the fund from which appropriated.

Section 11. **Codification instruction.** Section 10 is intended to be codified as an integral part of Title 2, chapter 18.

Section 12. **Effective date.** (1) Sections 1 through 15, excluding section 2, are effective July 11, 1981.

(2) Section 2 is effective on passage and approval.

Approved April 17, 1981.

CHAPTER NO. 422

AN ACT TO REPEAL THE INDIVIDUAL INCOME TAX SURTAX; AMENDING SECTIONS 15-30-105 AND 15-30-162, MCA; REPEALING SECTION 15-30-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident — alternative tax based on gross sales. (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of ½ of 1% of the dollar volume of gross sales made in Montana during

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the taxable year. Such tax shall be in lieu of the *tax* imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 2. Section 15-30-162, MCA, is amended to read:

"15-30-162. Investment credit. (1) There is allowed as a credit against the *tax* imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(2) The amount of the credit allowed for the taxable year is the sum of:

(a) 20% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;

(b) the investment credit carryovers carried to the taxable year as provided in subsection (4); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (4).

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. In the case of a husband and wife who file separate returns, the investment credit may not exceed $2,500 plus 50% of the tax liability in excess of $2,500 unless the spouse of the taxpayer has no qualified investment for and no unused credit carryback or carryover to the taxable year of the spouse that ends with or within the taxpayer's taxable year.

(4) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (3), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 3. **Repealer.** Section 15-30-104, MCA, is repealed.

Section 4. **Effective date.** (1) This act is effective on January 1, 1981, and applies to taxable years beginning after December 31, 1980, unless Senate Bill 31, introduced in the 47th Legislature, is passed and approved.

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(2) If Senate Bill 31, introduced in the 47th Legislature, is passed and approved, this act is effective January 1, 1983, and applies to taxable years beginning after December 31, 1982.

Approved April 18, 1981.

CHAPTER NO. 423

AN ACT AMENDING SECTION 15-6-209, MCA, TO CLASSIFY AS TAX EXEMPT BUILDINGS OF COMMUNITY SERVICE ORGANIZATIONS ESTABLISHED CONTINUOUSLY SINCE JANUARY 1, 1981.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-209, MCA, is amended to read:

"15-6-209. Community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana;

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of social and rehabilitation services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, *1981*.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described herein which is leased in whole or in part to any person for business or profit-making purposes."

Approved April 18, 1981.

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CHAPTER NO. 424

AN ACT REVISING THE MONTANA CONSUMER LOAN ACT BY PROVIDING FOR THE ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS IN THE ACT IN ACCORDANCE WITH CHANGES IN THE CONSUMER PRICE INDEX; INCREASING CERTAIN CHARGES, INCLUDING CERTAIN FEES TO BE PAID TO THIRD PARTIES IN THE PRINCIPAL AMOUNT OF THE LOAN; PROVIDING FOR THE UTILIZATION OF THE DISCLOSURES REQUIRED BY THE FEDERAL CONSUMER CREDIT PROTECTION ACT; AND PROVIDING FOR ATTORNEY FEES IN LEGAL ACTIONS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-301 THROUGH 32-5-303, 32-5-306, AND 32-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans of $25,000 or less, *which amount is subject to change pursuant to the provisions of [section 9],* generally repayable in substantially equal installments."

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in amounts of $25,000 or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than those provided by 31-1-107(1), except as provided in and authorized by this chapter. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

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(3) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

(4) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of [section 9] on adjustment of dollar amounts."

Section 3. Section 32-5-201, MCA, is amended to read:

"32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000 but not exceeding $25,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid into the state treasury by the department.

(4) The amounts of $1,000 and $25,000 in subsection (2) are subject to change pursuant to the provisions of [section 9]."

Section 4. Section 32-5-301, MCA, is amended to read:

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"32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding *$500*;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding *$500* but not exceeding *$1,000.*

(2) The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of *$12* per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500.

(3) Charges in (1) and (2) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(4) On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90.

(5) When any loan contract, new loan, renewal, or otherwise, is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(6) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(7) *(a)* The licensee may *include in the principal amount of any loan* the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

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(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(8) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this chapter is charged, contracted for, *and* received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(9) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection (12).

(10) On any loan of money exceeding $7,500 but not exceeding $25,000 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding. Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is

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the balance due after refund or credit is given to the borrower pursuant to subsection (5).

(11) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(12) The provisions of subsections (5) and (6) do not apply to loans made under subsections (9) through (11).

(13) The amounts of $90, $500, $1,000, $7,500, and $25,000 in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to the provisions of [section 9] on adjustment of dollar amounts."

Section 5. Section 32-5-302, MCA, is amended to read:

"**32-5-302. Installment payment — contract period.** (1) No licensee may enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; *or*

(c) for more than $1,000 to and including *$2,500,* exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

(3) The amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of [section 9] on adjustment of dollar amounts."

Section 6. Section 32-5-303, MCA, is amended to read:

"**32-5-303. Borrower to receive copy of contract or statement of contents.** At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, *either the disclosures required by the Federal Consumer Credit Protection Act,* a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301(7);

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(5) if such loan is prepaid in full."

Section 7. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance. (1) No insurance of any kind shall be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan except as hereinafter provided.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges, such loan shall not in any event exceed $25,000.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker, or

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insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this chapter.

(6) A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amounts of $300 and $25,000 in subsection (3) and (4) are subject to change pursuant to [section 9] on adjustment of dollar amounts."

Section 8. Section 32-5-402, MCA, is amended to read:

"32-5-402. Investigations. *(1)* The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(a) a licensee;

(b) a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of $25,000 or less; or

(c) a person whom the department has reason to believe is violating or is about to violate this chapter.

(2) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of [section 9] on adjustment of dollar amounts."

Section 9. **Adjustment of dollar amounts.** (1) From time to time the dollar amounts in [this act] designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100, compiled by the bureau of labor statistics, department of labor, and hereafter referred to as the index. The index for December 1980 shall be the reference base index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10% or more, but:

(a) the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts appearing in [this act] on [the effective date of this act];

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to [this act] as a result of earlier application of this section; and

(c) the dollar amounts may not be reduced below the amounts appearing in [this act] on [the effective date of this act].

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(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States bureau of labor statistics. If the index is superseded, the index referred to in this section shall be the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall adopt a rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate [this act] with respect to a transaction otherwise complying with [this act] if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

Section 10. **Attorney fees.** If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

Section 11. **Codification instruction.** Sections 9 and 10 are intended to be codified as an integral part of Title 32, chapter 5, and the provisions of Title 32, chapter 5, apply to sections 9 and 10.

Approved April 18, 1981.

CHAPTER NO. 425

AN ACT TO PROVIDE THAT OIL AND GAS NET PROCEEDS TAX BE LEVIED ONLY ON OIL AND GAS SOLD DURING THE TAXABLE YEAR; AMENDING SECTIONS 15-23-602, 15-23-603, AND 15-23-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-602, MCA, is amended to read:

"15-23-602. Statement of yield. Each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before March 31 in each year make out and deliver to the department of revenue a statement of the gross *sales proceeds* of such natural gas, petroleum, or other

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crude or mineral oil from each well owned or worked by such person during the next preceding calendar year. *The gross sales proceeds shall be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well.* Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the well;

(3) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil *sold* from the well during the period covered by the statement;

(4) the gross *sales proceeds* in dollars and cents *or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold*;

(5) actual cost of extracting product from well;

(6) cost of construction, repairs, and betterments;

(7) actual cost of fire insurance and workers' compensation insurance."

Section 2. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross *sales proceeds of the* product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross *sales proceeds* thereof the following:

(a) all royalty paid in cash by the operator or producer *and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid*;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

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(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof."

Section 3. Section 15-23-605, MCA, is amended to read:

"15-23-605. Assessment of royalties. The amount of royalty received, *valued as provided in 15-23-603(1)(a),* shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines."

Section 4. **Tax computation during transition.** For the calendar year 1981, the operator or producer may exclude from the statement filed pursuant to 15-23-602, and the department of revenue shall exclude from the computation of net proceeds in 15-23-603 and 15-23-605, the gross sales proceeds of any product the value of which was included in determining the net proceeds of any well or royalty for the calendar year 1980.

Section 5. **Applicability.** This act applies to taxable years beginning after December 31, 1979.

Section 6. **Effective date.** This act is effective January 1, 1981.

Approved April 18, 1981.

CHAPTER NO. 426

AN ACT TO GENERALLY REVISE AND CLARIFY INSTITUTIONAL INDUSTRIES PROGRAMS OF THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 53-1-301 THROUGH 53-1-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. The department may:

(1) establish industries in institutions which will result in the production or manufacture of *such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations,* and that will assist in the rehabilitation of residents in institutions;

(2) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

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(3) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(4) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(5) require institutions to purchase needed goods from other institutions;

(6) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(7) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(8) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(9) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(10) with the approval of the department, sell *manufactured or* agricultural products and livestock on the open market;

(11) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(12) pay an inmate *or resident of an institution*, from receipts from the sale of *products* produced or manufactured *or services rendered in a program in which he is working. Payment* for the performance of work *may be* based on the following criteria:

(a) knowledge and skill;

(b) attitude toward authority;

(c) physical effort;

(d) responsibility for equipment and materials;

(e) regard for safety of others.

(13) The maximum rate of pay shall be determined by the appropriation established for each program."

Section 2. Section 53-1-302, MCA, is amended to read:

"**53-1-302. Disposition of receipts from sale of goods.** Receipts from the sale of goods produced or manufactured by an institution shall be deposited in the revolving fund account for the use of the industries program of the institution. At the end of each *biennium, all unobligated revolving funds over a $50,000 ending-fund balance, except for those funds reserved for equipment replacement as determined by an equipment replacement schedule, shall revert to the state general fund account.*"

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Section 3. Section 53-1-303, MCA, is amended to read:

"53-1-303. Prohibited acts. *Unless* permitted by the department, arranging for the labor of a resident of an institution is prohibited."

Approved April 18, 1981.

CHAPTER NO. 427

AN ACT TO GENERALLY REVISE DEPOSIT REQUIREMENTS RELATING TO INSURANCE COMPANIES; AMENDING SECTION 33-2-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-531, MCA, is amended to read:

"33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired *and valued* in accordance with *parts 5 and* 8 of this chapter.

(5) Real estate mortgage loans, chattel mortgage loans, and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. If the insurer uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a security interest in such real estate, in a form acceptable to the commissioner, shall be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and such default continues for a period of 120 days, the

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commissioner may declare such security no longer eligible for deposit under this section."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1981.

CHAPTER NO. 428

AN ACT REVISING THE DEFINITION OF "FLOODPLAIN"; AMENDING SECTION 76-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board.

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(8) "Establish" means construct, place, insert, or excavate.

(9) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

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(10) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude which has a 1% chance of occurring in any given year.

(11) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency, *except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.*

(12) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(16) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(17) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks; provided that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1981.

CHAPTER NO. 429

AN ACT TO INCREASE THE MINIMUM CONTRACT AMOUNT ABOVE WHICH MUNICIPAL CONTRACTS MUST BE ADVERTISED AND LET FOR BID AND MAY BE PAID IN INSTALLMENTS; AMENDING SECTIONS 7-5-4302 AND 7-5-4306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4302, MCA, is amended to read:

"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, *repair,*

or maintenance for which must be paid a sum exceeding *$10,000* must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein."

Section 2. Section 7-5-4306, MCA, is amended to read:

"7-5-4306. Use of installment purchase contract. (1) Subject to the requirements of subsection (2), when the amount to be paid under any such contract shall exceed *the amount set forth in 7-5-4302(1)*, the council may provide for the payment of such an amount in installments extending over a period of not more than 5 years; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

(2) When such amount is extended over a term of 2 years, at least 40% thereof shall be paid the first year and the remainder the second year. When such amount is extended over a term of 3 years, at least one-third thereof shall be paid each year. If such amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If such amount is extended over a term of 5 years, at least one-fifth is to be paid each year."

Approved April 18, 1981.

CHAPTER NO. 430

AN ACT TO REVISE THE PROCEDURES FOR CREATION OF A NEW ELEMENTARY DISTRICT; PROVIDING THAT THE TERRITORY TO BE INCLUDED IN THE NEW DISTRICT MUST CONSIST OF PARCELS OF LAND THAT ARE CONTIGUOUS; AMENDING SECTIONS 20-6-216 AND 20-6-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-216, MCA, is amended to read:

"20-6-216. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

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(1) the taxable value of the taxable property of the territory proposed to be included in such new district is $75,000 or more, except that when 50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be $100,000 or more after the territory is detached;

(3) the ANB in any of the existing districts is not reduced to less than 15;

(4) the territory to be included in the new district shall consist only of parcels of land that are contiguous."

Section 2. Section 20-6-217, MCA, is amended to read:

"20-6-217. Procedure for creation of new elementary district. (1) The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 10 children between the ages of 6 and 16 years who reside in the territory that would be included in the new district and who reside more than 3 miles over the shortest practical route from an operating school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of such petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent *considers* it advisable and in the best interests of the residents of the proposed new district *and the residents of the remaining district*, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the

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request. *In the order creating the new district, the county superintendent shall establish the effective date for its creation and the procedures for effecting an orderly transition.*

(4) Either of the county superintendent's orders may be appealed to the board of county commissioners within 30 days after the date of such order. Such appeal shall be in writing, signed by not less than three resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

(5) When a new elementary district is created, the county superintendent shall appoint the trustees of the new district, giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

(6) The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void, and the new district shall cease to exist, if such district does not open and operate a school within *2 years* after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be reincorporated in the district or districts in which it was located before the creation of such new district and the trustees shall thereafter be without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition."

Approved April 18, 1981.

CHAPTER NO. 431

AN ACT TO TRANSFER THE LICENSING AUTHORITY OVER NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS FROM THE DEPARTMENT OF BUSINESS REGULATION TO THE DIVISION OF MOTOR VEHICLES; AND TO REMOVE DUPLICATE LICENSING OF NEW MOTOR VEHICLE DEALERS; AMENDING TITLE 61, CHAPTER 4, PART 2, MCA; REPEALING SECTION 61-4-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply:

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(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Division" means the division of motor vehicles.

(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(6) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(9) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(10) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, which when installed form an integral part of the new motor vehicle and which constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles or used motor vehicles taken in trade on new motor vehicles."

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Section 2. **Functions transferred — name change.** The functions of the department of business regulation contained in Title 61, chapter 4, part 2, are transferred to the division of motor vehicles. Unless inconsistent with this act, wherever the term "department", meaning department of business regulation, appears in Title 61, chapter 4, part 2, it is changed to "division", meaning division of motor vehicles. The code commissioner is authorized and instructed to change the word "department" to "division" in Title 61, chapter 4, part 2, in accordance with this act.

Section 3. Section 61-4-202, MCA, is amended to read:

"61-4-202. License requirements. (1) No new motor vehicle dealer, manufacturer, distributor, factory branch, or distributor branch may engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this part.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information, if applicable, shall be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) The license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(5) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part. Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer must obtain a

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license under part *1 of this chapter*. The obtaining of a license under this part *or part 1* conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors."

Section 4. Repealer. Section 61-4-211, MCA, is repealed.

Approved April 18, 1981.

CHAPTER NO. 432

AN ACT TO WAIVE STATE LICENSURE INSPECTION FOR HOSPITALS THAT ARE ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS; AMENDING SECTIONS 50-5-101 AND 50-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(8) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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(9) "Federal acts" means federal statutes for the construction of health care facilities.

(10) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(11) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(12) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(15) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(16) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(17) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(18) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two

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or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(19) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(20) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(21) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(22) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

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(23) "Offer" means the holding out by a health care facility that it can provide specific health services.

(24) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(25) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(26) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(27) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(28) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(29) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(30) "State plan" means the state medical facility plan provided for in part 4."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards — accreditation by joint commission. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

(4) Any hospital that furnishes written evidence including the recommendation for future compliance statement to the department of its accreditation granted by the joint commission on accreditation of hospitals is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the department may inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when such complaints pertain to licensing requirements. Inspection by the department upon such complaint shall be limited to the specific area or condition of the health care facility to which the complaint pertains."

Approved April 18, 1981.

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CHAPTER NO. 433

AN ACT TO WAIVE STATE LICENSURE INSPECTION FOR CLINICAL LABORATORIES THAT ARE ACCREDITED BY THE COLLEGE OF AMERICAN PATHOLOGISTS; AMENDING SECTION 50-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(8) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(9) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(10) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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(11) "Federal acts" means federal statutes for the construction of health care facilities.

(12) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(13) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(14) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(15) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(16) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(17) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

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(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(20) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(21) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

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(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(31) "State plan" means the state medical facility plan provided for in part 4."

Section 2. **Exemption from inspection — accredited laboratories.** Any clinical laboratory that furnishes written evidence to the department of its accreditation by the college of American pathologists is exempt from inspection by the department during the period of accreditation.

Section 3. **Application.** [Section 2] applies only to those clinical laboratories operated by a hospital licensed by Montana.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of 50-5-101 apply to section 2.

Approved April 18, 1981.

CHAPTER NO. 434

AN ACT TO REMOVE THE REQUIREMENT THAT THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION MUST CONTRACT DIRECTLY WITH LOCAL SCHOOL DISTRICTS OR COOPERATIVES FOR THE DELIVERY OF AUDIOLOGICAL SERVICES; AMENDING SECTION 20-7-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying handicapped children;

(5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education;

(12) administering regional special education services for children in need of special education in accordance with policies of the board of public education; *and*

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education."

Approved April 18, 1981.

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CHAPTER NO. 435

AN ACT TO PROVIDE FUNDS FOR SPECIAL IMPROVEMENT DISTRICT REVOLVING FUNDS BY ALLOWING 5 PERCENT OF THE IMPROVEMENT COST TO BE AN INITIAL INCIDENTAL EXPENSE TO BE DEPOSITED IN THE REVOLVING FUND; AMENDING SECTIONS 7-12-4169, 7-12-4222, AND 7-12-4227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4169, MCA, is amended to read:

"7-12-4169. Incidental expenses considered as cost of improvements. *(1)* The costs and expenses connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

(2) The costs of any improvement may, at the option of the municipal governing body, include an amount not to exceed 5% of the principal amount of any bonds or warrants to be issued which shall be deposited in the revolving fund created in 7-12-4221."

Section 2. Section 7-12-4222, MCA, is amended to read:

"7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the city or town council:

(a) *(i)* may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; *and*

(ii) may include in the cost of the improvement to be defrayed from the proceeds of the bond or warrants an amount up to 5% of the principal amount of the bonds or warrants and deposit it in the revolving fund upon receipt of such proceeds; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund; such levy, together with such transfer, not to exceed in any one year 5% of the principal amount of the then-outstanding special improvement district bonds or sidewalk, curb, and alley approach warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the

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revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund."

Section 3. Section 7-12-4227, MCA, is amended to read:

"7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount *deposited in the revolving fund under 7-12-4169(2) and in excess of the amount* which the council deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order such excess or any part thereof transferred to the general fund of such city or town; or

(2) use such excess or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town."

Section 4. **Disposal of funds deposited in revolving fund.** Any funds without interest deposited in the revolving fund under 7-12-4169(2) less the amount of any loan to the district fund not repaid may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants are paid.

Approved April 20, 1981.

CHAPTER NO. 436

AN ACT TO AUTHORIZE THE SALE OF ELECTRICITY FROM QUALIFYING SMALL POWER PRODUCTION FACILITIES TO UTILITIES UNDER RATES AND CONDITIONS MUTUALLY AGREED UPON OR ESTABLISHED BY THE PUBLIC SERVICE COMMISSION OR TO ELECTRIC COOPERATIVES UNDER TERMS AND CONDITIONS MUTUALLY AGREED UPON AND IN COMPLIANCE WITH THE PUBLIC UTILITY REGULATORY POLICIES ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Commission" means the Montana public service commission.

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(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Utility" means any public utility supplying electricity and regulated by the commission.

(4) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources;

(b) has a power production capacity that together with any other facilities located at the same site, is not greater than 80 megawatts; and

(c) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

Section 2. **Generation and sale of electricity by qualifying small power production facility.** (1) A qualifying small power production facility may generate electricity from the sources described in [section 1(4)(a)] and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in [section 1(4)(a)] and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act.

Section 3. **Required sale of electricity under rates and conditions prescribed by commission.** (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in [section 4].

Section 4. **Standards for determination of rates and conditions.** (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (4).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in

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order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

Approved April 20, 1981.

CHAPTER NO. 437

AN ACT TO AMEND THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH THE FEDERAL STRIP MINE ACT AND CONDITIONS OF THE SECRETARY OF INTERIOR'S APPROVAL OF THE MONTANA PROGRAM; AMENDING SECTIONS 82-4-203, 82-4-221, 82-4-222, 82-4-251, AND 82-4-254, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden

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is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(9) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(10) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(11) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(12) "Failure to conserve coal" means the nonremoval or nonutilization of *minable* and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(13) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(14) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would

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not expose himself or herself to the danger during the time necessary for abatement.

(15) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(16) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(17) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(18) "Mineral" means coal and uranium.

(19) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(20) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

(21) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(22) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(23) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(24) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(25) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

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(26) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(27) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(28) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(29) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(30) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(31) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(32) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(33) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part."

Section 2. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to

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be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least *120* but not more than *150* days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules hereunder, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden shall be on the opponents of renewal to demonstrate that the permit should not be renewed. A permit shall terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at such time as the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of every permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person shall be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision shall be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 3. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application. (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all

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known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip- or underground-mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an

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underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application;

(m) a coal conservation plan; and

(n) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

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(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of

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explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county where the major portion of mining is proposed to occur."

Section 4. Section 82-4-251, MCA, is amended to read:

"82-4-251. Noncompliance — suspension of permits. (1) The commissioner or an authorized representative of the department shall, if he determines on the basis of an inspection that any condition or practices exist or that the permittee is in violation of any requirement of this part or any permit condition required by the part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, immediately order cessation of *the operation* or the portion thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of *the operation*, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations requiring whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of *the operation* or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the

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violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) *A person* issued a notice or an order of *cessation* pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days

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of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 5. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation — penalty. (1) A person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition *of a permit* and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than $750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of

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proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(3) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(4) Any relief granted by a court under subsection (3)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(5) A person who violates any of the provisions of this part or any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and

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shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(6) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(7) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(8) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Approved April 20, 1981.

CHAPTER NO. 438

AN ACT TO INCREASE THE AMOUNT OF MONEY THAT A DISCHARGED INMATE MAY RECEIVE; AMENDING SECTION 53-30-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-111, MCA, is amended to read:

"53-30-111. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive $5; all other discharged or paroled inmates *may receive "gate money" in an amount up to $100. The* department of institutions may establish rules which allow it to deduct up to one-fourth of an inmate's wages earned under 53-1-301 and hold that money in a special account to be disbursed to the inmate when he is discharged or paroled. *This amount shall be in addition to the "gate money".*"

Approved April 20, 1981.

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CHAPTER NO. 439

AN ACT TO GENERALLY REVISE, CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312, 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108, 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111, 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113, 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107, 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211, 15-70-334, 16-1-409, 40-5-222 THROUGH 40-5-226, 40-5-241, 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND 15-31-527, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department of revenue, directed to a sheriff of any county of Montana or to any agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in [section 4], there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

Section 2. **Issuance of warrant.** (1) If a tax, other than inheritance or estate tax, administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice, a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under [section 3] if the department determines that it is appropriate to utilize [section 3].

Section 3. **Emergency issuance of warrant.** (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in [section 2] if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

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(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

Section 4. **Filing with district court.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

Section 5. **Hearing.** (1) Except as provided in [section 7], a taxpayer has the right to request a hearing on the matter of tax liability prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to hearing to the taxpayer. A request for a hearing must be made in writing within 30 days of the date of the notice. This notice may be given prior to the notice referred to in [section 2]. If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled.

(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant.

Section 6. **Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

Section 7. **Emergency execution upon warrant.** (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired,

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must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under [section 5] does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

Section 8. **Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

Section 9. **Remedy not exclusive.** The use of the warrant for distraint provided for in [sections 1 through 8] is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

Section 10. Section 15-30-208, MCA, is amended to read:

"15-30-208. Withheld taxes held in trust for state — warrants to collect. *(1)* Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana.

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid *when* due, the department *may* issue a warrant *for distraint as provided in [sections 1 through 9]."*

Section 11. Section 15-30-226, MCA, is amended to read:

"15-30-226. Amounts withheld considered in trust. *The amounts* withheld by the withholding agent *under 15-30-221 through 15-30-228 are* considered funds held in trust by the withholding agent."

Section 12. Section 15-30-311, MCA, is amended to read:

"15-30-311. Warrant for distraint. If any tax imposed by this chapter or any portion of such tax is not paid *when* due, the department *may* issue a warrant *for distraint as provided in [sections 1 through 9]."*

Section 13. Section 15-30-312, MCA, is amended to read:

"15-30-312. Jeopardy assessments. (1) If the department finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

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(2) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once, *including the issuance of a warrant for distraint as provided in [sections 1 through 9].*"

Section 14. Section 15-31-406, MCA, is amended to read:

"15-31-406. License tax sections incorporated by reference. The provisions of the following sections of this chapter are incorporated into this part by reference and made a part hereof:

(1) that part of 15-31-101 which defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income shall not be taxed;

(2) sections 15-31-111 through 15-31-114; 15-31-141 and 15-31-142; 15-31-301 through 15-31-313; 15-31-501 through 15-31-509; 15-31-525 *and 15-31-526*; 15-31-531 and 15-31-532; and 15-31-541 through 15-31-543, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there shall be substituted the words "income tax"."

Section 15. Section 15-31-525, MCA, is amended to read:

"15-31-525. Levy upon and sale of property. If any tax imposed by this chapter or any portion of such tax is not paid *when* due, the department of revenue *may* issue a warrant *for distraint as provided in [sections 1 through 9].*"

Section 16. Section 15-35-105, MCA, is amended to read:

"15-35-105. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a *warrant for distraint* may be filed. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department."

Section 17. Section 15-36-107, MCA, is amended to read:

"15-36-107. Procedure to compute tax in absence of statement — penalty and interest. If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter and during each month thereof and the average value thereof during each

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such month and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of 10% thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a *warrant for distraint* may be filed. The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department."

Section 18. Section 15-36-108, MCA, is amended to read:

"15-36-108. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien *has* precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 19. Section 15-37-107, MCA, is amended to read:

"15-37-107. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien *has* precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 20. Section 15-37-206, MCA, is amended to read:

"15-37-206. Collection — warrant for distraint. *(1)* The department shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a *warrant for distraint* may be filed.

(2) If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The *resulting* lien has precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 21. Section 15-38-107, MCA, is amended to read:

"15-38-107. Procedure in case of failure to file statement. (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall immediately after such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid and shall fix the amount of the tax due to the state from such person for such calendar

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year and shall add to the amount of such tax a penalty of 10% thereof plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(2) The department shall mail to the person required to file an annual statement and pay any tax, a letter setting forth the amount of tax, penalty, and interest due. *The letter shall advise that if payment is not received, a warrant for distraint may be filed.*

(3) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 is provided to the department."

Section 22. Section 15-38-108, MCA, is amended to read:

"15-38-108. Warrant for distraint. *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 23. Section 15-51-111, MCA, is amended to read:

"15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must further contain a statement that if payment is not made, a *warrant for distraint* may be filed. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department."

Section 24. Section 15-51-112, MCA, is amended to read:

"15-51-112. Warrant for distraint. *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 25. Section 15-53-112, MCA, is amended to read:

"15-53-112. Estimation of tax upon failure to file statement or pay tax — notice. (1) If a person fails, neglects, or refuses to file the statement required by 15-53-102 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department of revenue shall proceed to inform itself as best it may regarding the total gross income of the person from its telephone business within this state during the quarter.

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(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a *warrant for distraint* may be filed."

Section 26. Section 15-53-113, MCA, is amended to read:

"15-53-113. Warrant for distraint. *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any claim, lien, or demand thereafter filed and recorded."

Section 27. Section 15-54-112, MCA, is amended to read:

"15-54-112. Estimation of tax upon failure to file statement — notice. (1) If a person fails, neglects, or refuses to make and file the statement required by 15-54-103, the department of revenue shall determine as nearly as possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross receipts of the person from the business in this state during the year next preceding April 1.

(2) The department shall prepare a statement showing the amount of the gross receipts and shall compute and assess the amount of license taxes due from the person and shall give notice to the person in the same manner as though the statement had been filed on time and shall proceed to collect the license tax, if delinquent, together with penalty and interest as provided for other delinquencies. *The notice shall advise that if payment is not made, the department may file a warrant for distraint.*"

Section 28. Section 15-54-113, MCA, is amended to read:

"15-54-113. Warrant for distraint. *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any claim, lien, or demand thereafter filed and recorded."

Section 29. Section 15-55-109, MCA, is amended to read:

"15-55-109. Warrant for distraint. *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any claim, lien, or demand thereafter filed and recorded."

Section 30. Section 15-56-112, MCA, is amended to read:

"15-56-112. Estimation of tax upon failure to file return. (1) If a person fails to make the report required by 15-56-103, the department shall determine the value of the property of that person in this state from any information that the department may be able to obtain.

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(2) The department shall prepare a statement showing the amount of the valuation determined and shall compute and assess the amount of license taxes due and shall give notice to the person failing to make the report in the same manner as though a report had been filed as required by 15-56-103. *The notice shall advise that if payment is not made, the department may file a warrant for distraint.*"

Section 31. Section 15-56-113, MCA, is amended to read:

"**15-56-113. Warrant for distraint.** *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any claim, lien, or demand thereafter filed and recorded."

Section 32. Section 15-58-106, MCA, is amended to read:

"**15-58-106. Procedure to determine tax on failure to file statement — penalty.** (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-58-105 or shall fail to make payment of such license tax within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license taxes due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a *warrant for distraint* may be filed.

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-58-105 is provided to the department."

Section 33. Section 15-58-107, MCA, is amended to read:

"**15-58-107. Warrant for distraint.** *If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien *has* precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 34. Section 15-59-106, MCA, is amended to read:

"**15-59-106. Procedure to estimate tax on failure to file statement — penalty.** (1) If any such person shall fail, neglect, or refuse to file any statement required by 15-59-105 within the time required or shall fail to pay the tax required by this part on or before the date such

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payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amounts of the respective articles or products enumerated in 15-59-101(1) and 15-59-102 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a *warrant for distraint* may be filed.

(4) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-105 is provided to the department."

Section 35. Section 15-59-107, MCA, is amended to read:

"15-59-107. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 36. Section 15-59-205, MCA, is amended to read:

"15-59-205. Procedure to estimate tax on failure to file — penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-59-204 within the time required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license tax due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license tax a penalty of 10% of the amount of such license tax plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license tax was due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a *warrant for distraint* may be filed.

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-204 is provided to the department."

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Section 37. Section 15-59-206, MCA, is amended to read:

"15-59-206. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien *has* precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 38. Section 15-70-211, MCA, is amended to read:

"15-70-211. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien *has* precedence over any other claim, lien, or demand filed or recorded thereafter. No action *may* be maintained to enjoin the collection of all or any part of the license tax."

Section 39. Section 15-70-334, MCA, is amended to read:

"15-70-334. Warrant for distraint. *If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien *has* precedence over any other claim, lien, or demand thereafter filed or recorded."

Section 40. Section 16-1-409, MCA, is amended to read:

"16-1-409. Failure to make beer tax returns — penalties. (1) If any brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 through 16-1-408 shall fail, neglect, or refuse to make any return required by this code or shall fail to make payment of such tax within the time herein provided, the department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler.

(2) The department shall add to the amount of tax due a penalty of 5% thereof for the first failure, willful neglect, or refusal; 10% for the second; 15% for the third; and 25% for the fourth and each subsequent failure, neglect, or refusal; which shall be in addition to the 5% penalty provided for nonpayment of such tax within the time provided.

(3) Said tax and the penalties added thereto shall bear interest at the rate of 1% per month from the date such returns should have been made and said tax paid.

(4) The department shall then proceed to collect such tax with penalties and interest. Upon request of the department it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax.

(5) *If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting* lien *has*

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precedence over any other claim, lien, or demand thereafter filed or recorded.

(6) No action shall be maintained to enjoin the collection of such tax or any part thereof.

(7) Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow such examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed shall be deemed guilty of having committed a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000."

Section 41. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within *30* days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after *30* days from the date of service upon the debtor or *30* days from the receipt or refusal by the debtor of the notice of debt."

Section 42. Section 40-5-223, MCA, is amended to read:

"40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible

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parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within *30* days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before *30* days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before *30* days of the date of service, the support debt shall be assessed and determined subject to the computation and the department *may* issue a warrant *for* distraint authorizing a collection action under this part.

(4) If the responsible parent, within *30* days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible parent may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt."

Section 43. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance — warrant of distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant *for* distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent

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may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing."

Section 44. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure. (1) In lieu of the procedures provided in 40-5-223 and 40-5-224, the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than *30* days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

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(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt."

Section 45. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under 40-5-221 and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under 40-5-221. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under 40-5-214.

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within *30* days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall

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be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this part without further necessity of action by the hearing officer."

Section 46. Section 40-5-241, MCA, is amended to read:

"40-5-241. Warrant for distraint. *Thirty-one* days after receipt or refusal of notice of debt under provisions of 40-5-222 or *31* days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant *for* distraint *based on the amount of the support debt. The warrant is subject to the provisions of [sections 1, 4, 5, 8, and 9], with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part. Notwithstanding the provisions of [subsection (3) of section 5], an appeal from a hearing may be made directly to district court, as provided in 40-5-253, and is not appealable to the state tax appeal board.*"

Section 47. Section 40-5-245, MCA, is amended to read:

"40-5-245. Satisfaction of debt after levy on property — redemption. Any person owning real property or any interest in real property against which a warrant *for* distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the property *shall be restored* to him and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state."

Section 48. Section 40-5-246, MCA, is amended to read:

"40-5-246. Release of distraint and return of seized property — effect. The department may at any time release a distraint on all or part of the property of the debtor or order the return *of* seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property."

Section 49. Section 40-5-255, MCA, is amended to read:

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"40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant *for* distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant *for* distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 50. Section 40-5-256, MCA, is amended to read:

"40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant *for* distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months."

Section 51. Section 69-1-226, MCA, is amended to read:

"69-1-226. Failure to pay fee — penalty and interest — collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a *warrant for distraint* may be filed.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department."

Section 52. Section 69-1-227, MCA, is amended to read:

"69-1-227. Warrant for distraint. *If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9].* The *resulting* lien has precedence over any claim, lien, or demand thereafter filed and recorded."

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Section 53. **Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to sections 1 through 9.

Section 54. **Repealer.** Sections 15-30-315 and 15-31-527, MCA, are repealed.

Approved April 20, 1981.

CHAPTER NO. 440

AN ACT TO PROVIDE FOR THE RIGHT OF FIRST REFUSAL TO THE FORMER OWNER OF ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sale of property acquired for public use when use abandoned — procedure.** (1) Whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 4 successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

Section 2. **Option of original owner or successor in interest to purchase at sale price.** (1) The owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at a sale provided for in [section 1]. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to sections 1 and 2.

Approved April 20, 1981.

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CHAPTER NO. 441

AN ACT IMPLEMENTING CONSTITUTIONAL AMENDMENT NO. 9, WHICH AUTHORIZES THE LEGISLATURE TO ESTABLISH EXCEPTIONS TO THE CONFIDENTIALITY OF PROCEEDINGS BEFORE THE JUDICIAL STANDARDS COMMISSION; AUTHORIZING AN EFFICIENCY AND EFFECTIVENESS AUDIT; REQUIRING THE COMMISSION TO REPORT TO THE LEGISLATURE; AMENDING SECTIONS 3-1-1105 AND 3-1-1107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1105, MCA, is amended to read:

"3-1-1105. Confidential proceedings — rules for commission. (1) *Except as provided in [sections 2 through 7], all* papers filed with and proceedings before the commission or masters are confidential *and the* filing of papers with and the testimony given before the commission or masters is privileged communication.

(2) The commission shall make rules for the conduct of its affairs and the *enforcement of* confidentiality *consistent with this part.*"

Section 2. **Public disclosure required.** If the commission finds good cause to order a hearing pursuant to 3-1-1106(2), the commission must allow public access to:

(1) all papers pertaining to each finding of good cause, including charges that are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

(2) the proceedings in which the commission or masters hear the charges against a judge; and

(3) all transcripts or recordings of proceedings before the commission or masters pertaining to the matters described in subsections (1) and (2).

Section 3. Section 3-1-1107, MCA, is amended to read:

"3-1-1107. Action by supreme court. *(1)* The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal, or retirement of a judicial officer; or

(b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public."

Section 4. **Judge's waiver of confidentiality — hearing made public.** The commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right

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of confidentiality and requests in writing that the proceedings be accessible to the public.

Section 5. **Public statements by commission.** In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge against whom the complaint has been filed, the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;

(2) clarify the procedural aspects of the disciplinary proceedings;

(3) explain the right of the judge to a fair hearing without prejudgment;

(4) state that the judge denies the allegations; or

(5) declare that there is insufficient evidence for a finding of good cause.

Section 6. **Disclosure for judicial selection — appointment or assignment.** If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the commission about that judge, information may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice.

Section 7. **Efficiency and effectiveness — audit authorized.** (1) The legislative auditor may audit the commission to determine whether it is efficiently and effectively processing complaints against judicial officers in the state in accordance with this part.

(2) The confidentiality provisions of this part do not bar the legislative auditor from obtaining access to any information possessed by the commission that is necessary to the legislative audit function so long as confidential information is kept confidential by the legislative auditor.

Section 8. **Commission report to legislature.** (1) The commission shall submit to the legislature each year the legislature meets in regular session a report containing the following information:

(a) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the judge complained against;

(b) the date each complaint was filed;

(c) the general nature of each complaint;

(d) whether there have been previous complaints against the same judge and, if so, the general nature of the previous complaints;

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(e) the present status of all complaints filed with or pending before the commission during the preceding biennium; and

(f) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court.

(2) The commission must observe the confidentiality provisions of this part in fulfilling the requirements of this section.

Section 9. **Codification instruction.** Sections 2 through 7 are intended to be codified as an integral part of Title 3, chapter 1, part 11, and the provisions of Title 3, chapter 1, part 11, apply to sections 2 through 7.

Approved April 20, 1981.

CHAPTER NO. 442

AN ACT TO CREATE THE OFFICE OF CHIEF WATER JUDGE; TO PROVIDE FOR THE APPOINTMENT, RESPONSIBILITIES, JURISDICTION, AND ADMINISTRATIVE REQUIREMENTS OF THE CHIEF WATER JUDGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appointment of chief water judge — term of office.** (1) The chief justice of the Montana supreme court shall appoint a chief water judge from among the district judges serving or retired as of the time of appointment.

(2) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature.

Section 2. **Salary — office space.** (1) The chief water judge is entitled to receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge shall be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money may be appropriated by the legislature from the water rights adjudication account.

Section 3. **Duties of the chief water judge.** The chief water judge shall:

(1) coordinate with the department of natural resources and conservation in compiling information submitted on water claim forms under Title

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85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division.

(2) assure that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and

(3) assure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

Section 4. **Jurisdiction of chief water judge.** (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities.

Section 5. **Initial appointment.** The chief justice of the Montana supreme court shall make the initial appointment of a chief water judge on or before January 4, 1983.

Approved April 20, 1981.

CHAPTER NO. 443

AN ACT TO REVISE THE MOTOR VEHICLE DEALER LAWS BY CHANGING THE FEES; REVISING DISTRIBUTION OF DEALER PLATES; PROVIDING FOR DEMONSTRATOR PLATES AND USES; PROVIDING FOR RECREATIONAL VEHICLE DEALER LICENSING; AND AMENDING SECTIONS 61-4-101 THROUGH 61-4-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Recreational vehicle.** The term "recreational vehicle" as used in 61-4-101 through 61-4-105 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

Section 2. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license. (1) Every person, firm, corporation, or association which, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, *recreational vehicles,* used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers,

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or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the division a verified application for licensure as a dealer, on a blank to be furnished by the division for that purpose and containing the information required. The application and all of the information contained in it shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter specified. A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for *renewal* of a license has been received by the division prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", *"RV"*, "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a *recreational vehicle,* trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

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(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, *recreational vehicles,* trailers, semitrailers, special mobile equipment, or motorcycles. *An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.*

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually."

Section 3. Section 61-4-102, MCA, is amended to read:

"61-4-102. Fees. (1) Upon making such application, the applicant shall pay to the division, in addition to the fees required of dealers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the division shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the division is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this chapter, it may thereupon issue the same.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, *recreational vehicles,* or trailers as follows:

(a) *(i)* all dealers in motor vehicles *and recreational vehicles,* a fee of *$25,* which shall entitle such dealer to *one set* of number plates, and *$25* additional fee for each additional set of number plates, *subject to the following limitations on the number of additional sets allowed a dealer:*

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the division.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates is entitled to purchase demonstrator plates at a cost determined by the division to

offset the cost of production. Demonstrator plates shall be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the division.

(b) dealers in motorcycles and trailers, including housetrailers, $45.

(3) If any dealer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

(4) A dealer in motor vehicles, *recreational vehicles,* or trailers who shall maintain more than one place of business or who shall maintain any branch establishment or establishments must register and pay a registration or license fee for each such place of business or establishment.

(5) A new applicant for a used motor vehicle dealer license shall pay $300 to the division in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer and used to transport the dealer's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days."

Section 4. Section 61-4-103, MCA, is amended to read:

"61-4-103. Assignment of dealer plates. (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, *recreational vehicle dealer,* or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the division shall assign to such dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with *such* sets of number plates as required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); *the letters "RV" if the dealer is authorized to sell recreational vehicles;* the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the "D" plate *or demonstrator plate,* no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer may be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate *or demonstrator plate* is authorized to sell both new and used motor vehicles (including trucks and truck trailers), and *such* plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The division shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: dealer number 4 in Lewis and Clark County

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would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.

(4) Dealers properly licensed under this section are authorized to use and display dealer's license plates on any motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles *and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, "officers and employees" include only such persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and, their spouses, or such other persons upon whom the dealer has paid social security taxes as a full-time employee.* No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. Each dealer is accountable for each plate issued and shall certify quarterly to the division the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) If it shall appear to the satisfaction of the division, from information furnished to it by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one herein authorized, or is not qualified as a dealer under the requirements of this section, the division may revoke such dealer's license. No person, firm, corporation, or association shall, for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds)."

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to section 1.

Approved April 20, 1981.

CHAPTER NO. 444

AN ACT TO REESTABLISH THE BOARD OF HEARING AID DISPENSERS UNDER EXISTING STATUTORY AUTHORITY AND RULES; TO GENERALLY REVISE AND CLARIFY THE OPERATIONS OF THE BOARD; REMOVING AN AUDIOLOGIST FROM THE BOARD; ADDING A PUBLIC MEMBER TO THE BOARD; CHANGING A TEMPORARY LICENSE TO A TRAINEE LICENSE AND PROVIDING GUIDELINES FOR ITS ISSUANCE; PROVIDING THAT FEES CHARGED BY THE BOARD ARE TO BE COMMENSURATE WITH BOARD ADMINISTRATIVE COSTS; AMENDING SECTIONS 2-8-103, 2-15-1616, 37-16-102, 37-16-201, 37-16-202, 37-16-301, 37-16-402, 37-16-405, 37-16-407, 37-16-408, AND 37-16-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of hearing aid dispensers is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

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(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

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(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616."

Section 3. Section 2-15-1616, MCA, is amended to read:

"**2-15-1616. Board of hearing aid dispensers.** (1) There is a board of hearing aid dispensers.

(2) *(a)* The board consists of five members appointed by the governor. The members are:

(i) one member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.

(ii) three members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least 5 years before their appointment to the board.

(iii) one public member who is not in the hearing health care field.

(b) One alternate member shall be appointed from each of the three *categories* to serve when a regular member cannot attend a scheduled meeting.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same *category* as the member whose term was not completed.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 4. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1616.

(2) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(3) "License" means a regular or *trainee* license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear *and the subsequent selection of a proper ear mold,* but does not include batteries, cords, or accessories."

Section 5. Section 37-16-201, MCA, is amended to read:

"37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer."

Section 6. Section 37-16-202, MCA, is amended to read:

"37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license *and supervise and administer the examination*;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

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(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in this state who is not licensed under this chapter."

Section 7. Section 37-16-301, MCA, is amended to read:

"37-16-301. Permanent place of business in state necessary — exception — records — notice. (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser.

(3) The department shall keep a record of the places of practice of persons who hold regular licenses or *trainee* licenses. A notice required to be given by the board or department to a person who holds a regular or *trainee* license may be given by mailing it to him at the address last given by him to the department.

(4) All licensed dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change."

Section 8. Section 37-16-402, MCA, is amended to read:

"37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee *fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board* and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school, has continuously engaged in the practice of fitting and dispensing hearing aids during the 3 years preceding the date of application, *or that he holds a current license as an audiologist under Title 37, chapter 15*;

(3) is free of contagious or infectious disease."

Section 9. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the examination under 37-16-403 may apply to the *board* for a *trainee* license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee *fixed by the board and commensurate with the cost of administering the license and related functions of the board,* the *board* shall issue a *trainee* license which entitles the applicant to *engage in a 6-month training period during which he shall:*

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(a) work for a period of 30 days under the direct control of a hearing aid dispenser during which the trainee may not in any way fit a hearing aid or test a customer;

(b) after the completion of the period provided for in subsection (2)(a), work for a period of 60 days during which he may do the testing necessary for proper selection and fitting of a hearing aid and make necessary impressions, but the delivery and final fitting of the hearing aid must be made by his supervisor; and

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, but while under supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 6-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) No *trainee* license may be issued by the *board* unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(5) If a person who holds a *trainee* license does not take the next examination given after the *completion of his training period*, the *trainee* license may not be renewed except for a good cause shown to the satisfaction of the board.

(6) If a person who holds a *trainee* license takes and fails to pass the next examination given after the *completion of his training period*, the board may authorize the department to renew the *trainee* license for a period ending 30 days after the results of the next examination given after the dates of renewal are announced. In no event may more than two renewals be permitted. The fee for renewal *shall be set by the board commensurate with the cost of administering the license and related functions of the board.*

(7) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the trainee license and examination requirements of this chapter."

Section 10. Section 37-16-407, MCA, is amended to read:

"**37-16-407. Renewal of license — fee.** A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. *The fee shall be fixed by the board to be commensurate with board costs in administering licensure and related board functions.* The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is not required to submit to an examination as a condition of renewal for a 3-year period after suspension."

Section 11. Section 37-16-408, MCA, is amended to read:

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"37-16-408. Deposit of fees. Fees collected under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to *appropriations and* 37-1-101(6)."

Section 12. Section 37-16-412, MCA, is amended to read:

"37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing *as provided under the Montana Administrative Procedure Act.*"

Section 13. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1981.

CHAPTER NO. 445

AN ACT TO RAISE THE MILL LEVIES GRANTED TO THE DEPARTMENT OF LIVESTOCK FOR BRANDS ENFORCEMENT AND ANIMAL HEALTH; AND TO RAISE THE MILL LEVIES GRANTED FOR PREDATOR CONTROL; AMENDING SECTIONS 15-24-923 AND 81-7-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-923, MCA, is amended to read:

"15-24-923. Limitation on levies — livestock moneys. (1) The amount of the levy may not in any event exceed *20* mills upon the taxable value of sheep and *30* mills upon the taxable value of other livestock. The levy is raised to aid in the payment of the general expenses of the brands-enforcement functions of the department of livestock, including salaries, office, detective, prosecution, travel, and all incidental expenses.

(2) A separate levy not to exceed *30* mills on all livestock may be raised for the use of the animal health functions of the department of livestock and placed in an earmarked revenue fund for the payment of indemnity for animals slaughtered; for salaries and expenses incurred in investigating, controlling, and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes; and for laboratory maintenance. At the written request of the department of livestock, the state treasurer and department of administration shall set aside in a separate account in the earmarked revenue fund any moneys as may be available and requested. The moneys may be expended only when the department of livestock determines that a livestock disease emergency exists requiring its expenditure for such purposes as the department may order and direct.

(3) A separate levy of not to exceed *10* mills on the taxable value of all livestock may be raised to be used at the discretion of the department of livestock for any or all of the purposes set forth in subsections (1) and (2) of this section or in 81-7-102 and 81-7-103."

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Section 2. Section 81-7-104, MCA, is amended to read:

"81-7-104. Levy for predator control moneys — use of proceeds. (1) The department of revenue shall annually levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting them against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties. The tax levy may not exceed in any one year *15* mills on the taxable value of all sheep and *10* mills on the taxable value of other livestock.

(2) The moneys received from the tax levies shall be transmitted monthly with other taxes for state purposes by the county treasurer of each county to the state treasury. The state treasurer shall place the money in an earmarked revenue fund with the other moneys as provided in 81-7-119. The moneys shall thereafter be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. All the moneys shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys."

Section 3. **Coordination — effectiveness contingent.** This act is effective only if Senate Bill 47 is passed by the 47th legislature and approved by the governor.

Approved April 20, 1981.

CHAPTER NO. 446

AN ACT TO DEFINE THE TYPE AND AMOUNT OF EARNED COMPENSATION THAT CAN BE INCLUDED IN THE DEFINITION OF AVERAGE FINAL COMPENSATION FOR CALCULATING BENEFITS IN THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-101, MCA, is amended to read:

"19-4-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) *(a)* "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602(1). *If the earned compensation includes any termination pay, the member shall select one of the following options:*

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service with the employer from whom this type of compensation was received to determine a yearly amount. The member and the employer must pay the regular contribution on the termination pay; or

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid

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in kind. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

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(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 2. **Effective date.** This act is effective August 1, 1981.

Approved April 20, 1981.

CHAPTER NO. 447

AN ACT RELATING TO THE PROVISION OF SERVICES BY MUNICIPALITIES TO NEWLY ANNEXED AREAS; AMENDING SECTIONS 7-2-4205, 7-2-4305, 7-2-4506, AND 7-2-4610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4205, MCA, is amended to read:

"**7-2-4205. Provision of services.** In all cases of annexation under current Montana law, services will be provided *according to a plan provided by the municipality* as specified in *7-2-4732*, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where *otherwise* mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 2. Section 7-2-4305, MCA, is amended to read:

"**7-2-4305. Provision of services.** In all cases of annexation under current Montana law, services will be provided *according to a plan provided by the municipality* as specified in *7-2-4732*, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where *otherwise* mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 3. Section 7-2-4506, MCA, is amended to read:

"**7-2-4506. Provision of services.** In all cases of annexation under current Montana law, services will be provided *according to a plan provided by the municipality* as specified in *7-2-4732*, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where *otherwise* mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Section 4. Section 7-2-4610, MCA, is amended to read:

"**7-2-4610. Provision of services.** In all cases of annexation under current Montana law, services will be provided *according to a plan provided by the municipality* as specified in *7-2-4732*, except:

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(1) as provided in 7-2-4736; and

(2) in first-class cities, where *otherwise* mutually agreed upon by the municipality and the freeholders of the area to be annexed."

Approved April 20, 1981.

CHAPTER NO. 448

AN ACT TO MINIMIZE TRANSMISSION OF RABIES BY PROHIBITING THE POSSESSION OF BATS, SKUNKS, FOXES, OR RACCOONS AND PROVIDING FOR PROHIBITION OF POSSESSION OF CERTAIN OTHER ANIMAL SPECIES KNOWN TO BE CAPABLE OF TRANSMITTING RABIES TO HUMAN BEINGS; AND PROVIDING AN EXEMPTION FOR SUCH ANIMALS THAT ARE POSSESSED FOR SIX MONTHS PRIOR TO JANUARY 1, 1982.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Department of health and environmental sciences" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of health and environmental sciences with the approval of the department of livestock.

Section 2. **Prohibition of possession of wild animals — exceptions.** No person may possess a wild animal unless he possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in such a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research.

Section 3. **Quarantine — destruction — testing.** (1) Whenever a person unlawfully possesses a wild animal, the department of health and environmental sciences or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality

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of contracting rabies, the animal may be impounded by the department of health and environmental sciences, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid shall be returned to its owner.

Section 4. **Payment of expenses.** Expenses incurred by the state under [section 3] must be paid by the person from whom possession of the wild animal was taken.

Section 5. **Authority to adopt rules.** The department of health and environmental sciences, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of [this act].

Section 6. **Injunction — recovery of costs.** (1) In addition to any other remedies provided by law, the department of health and environmental sciences or, upon the request of the department of health and environmental sciences, an appropriate county attorney may file an action to enjoin a violation of [this act] or rule adopted pursuant to it.

(2) The department of health and environmental sciences or the county attorney, if either prevails in any action brought pursuant to (1) above, is entitled to recover from the other party the costs, expenses, and reasonable attorney's fees incurred.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 20, 1981.

CHAPTER NO. 449

AN ACT AMENDING SECTION 81-8-301, MCA, LIMITING THE LIABILITY OF THE DEPARTMENT OF LIVESTOCK AND REQUIRING A RENEWAL EVERY FIVE YEARS OF NOTICES OF SECURITY AGREEMENTS AND OF ASSIGNMENTS OF SECURITY INTERESTS WITH THE DEPARTMENT OF LIVESTOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-301, MCA, is amended to read:

"81-8-301. Notices of security agreements — renewals — assignments. *(1)* The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association and bearing its recorded brand and shall list the notices on the official records of marks and brands kept by it. The department shall *transfer a copy of*

the notices *and their accompanying brands to* the central livestock markets. All forms on which the notices are given shall be prescribed by the department and furnished by the secured party who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed *and a copy is transferred* as hereinbefore provided. *The department of livestock may not be held liable to any secured party for the proceeds of livestock sold through a livestock market by the debtor.*

(2) Notices of security agreements must be renewed every 5 years commencing on January 1, 1983, by notifying the department in a manner prescribed by it and by paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(3) Assignments of security interests must be renewed every 5 years commencing on January 1, 1983, by notifying the department and paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(4) Failure to comply with the provisions of subsection (2) or (3) will result in the termination of the notice on the 91st day following the applicable January 1 without notification by the department.

(5) Satisfactions of security agreements must be filed immediately with the department of livestock."

Approved April 20, 1981.

CHAPTER NO. 450

AN ACT TO REVISE THE MEMBERSHIP OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 2-15-2104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2104, MCA, is amended to read:

"**2-15-2104. Board of health and environmental sciences — membership — quasi-judicial.** (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members having professional qualifications in a human health service licensed by a board within a department of professional and occupational licenses;

(b) one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) *four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.*

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Approved April 20, 1981.

CHAPTER NO. 451

AN ACT TO PROVIDE MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE, INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY; TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S RECORD AFTER 5 YEARS; AMENDING SECTION 61-8-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) *A* person convicted of a violation of 61-8-401 *may, in the discretion of the court,* be punished *by imprisonment in the county jail for up to 24 hours, and shall be punished* by a fine of not less than $100 or more than $500. *The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.*

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 *and by* imprisonment for not *less than 7 days or* more than 30 days. *Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.*

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions which may include alcohol or drug treatment or both if considered necessary by the counselor conducting the program. Each *counselor* providing such education or treatment shall, at the commencement of

the education or treatment, notify the court that the defendant has been *enrolled in a course* or treatment program. If the defendant fails to attend the *course* or the treatment program, the *counselor* shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. *If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record.*"

Approved April 20, 1981.

CHAPTER NO. 452

AN ACT TO GENERALLY REVISE THE LAW RELATING TO HEALTH SERVICE CORPORATIONS; TO INCREASE THE ANNUAL REPORT FEE TO 50 CENTS FOR EACH MEMBER; TO REQUIRE APPROVAL OF MEMBERSHIP CONTRACT FORMS BEFORE USE; AND TO REQUIRE EXAMINATION OF A HEALTH SERVICE CORPORATION AT LEAST ONCE EVERY 4 YEARS; AND AMENDING SECTIONS 33-30-105, 33-30-204, AND 33-30-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-30-204, MCA, is amended to read:

"**33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) enrollment representative's license:

(i) application for original license including examination and issuance of license $10

(ii) annual renewal ..... $ 5

(b) filing any other statement or report ..... $ 1

(c) for a certified copy of any document or other paper filed in the office of the commissioner, per page ..... $.50

(d) for the certificate and for affixing the seal thereto ..... $ 1

(e) filing of a membership contract $10

(f) filing of a membership contract package $25

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(g) filing annual report, a fee of *50* cents for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable, except that the minimum fee payable upon filing of an annual report is $100.

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fees and license fees received by him under this section."

Section 2. Section 33-30-301, MCA, is amended to read:

"33-30-301. Forms — filing, approval, hearing on disapproval, appeal. (1) A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with the commissioner *at least* 30 days *before* that form is first used. When a form does not comply with the requirements of this chapter, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within 10 days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than 15 days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this chapter, he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than 30 days after the hearing. The final order is effective 30 days after the hearing.

(2) A corporation whose forms have been ordered discontinued by the commissioner may appeal, within 15 days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section pending trial of the issues or the appeal."

Section 3. Section 33-30-105, MCA, is amended to read:

"33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined, its officers, employees, and agents, shall produce and make available to the commissioner or his

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examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or his examiner shall make a verified report of the examination.

(5) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper."

Approved April 20, 1981.

CHAPTER NO. 453

AN ACT TO STREAMLINE STATE SMALL BUSINESS LICENSING PROCEDURES; APPROPRIATING FUNDING FOR A LICENSING CENTER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Small Business Licensing Coordination Act".

Section 2. **Purpose.** The purposes of [this act] are to:

(1) eliminate retail, wholesale, consumer service, manufacturer, and distributor licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures; and

(3) distribute equitably the costs of licensing.

Section 3. **Definitions.** As used in [this act], "license" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity. "License" does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, Title 75, and Title 80. Such licenses are excluded from the coverage of [this act].

Section 4. **Designation of small business licensing coordination center — duties of center.** The governor shall designate an agency

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to administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the businessman in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process;

(12) perform other administrative tasks delegated to the center to improve state business license administration.

Section 5. **Appropriation.** There is appropriated $39,662 in fiscal year 1982 and $34,962 in fiscal year 1983 from the general fund to the agency designated by the governor to administer the small business licensing coordination center for the purpose of carrying out the provisions of this act.

Section 6. **Implementation schedule.** The following schedule shall be adhered to by the agency designated as the agency to administer the small business licensing coordination center:

(1) by July 1, 1981, hire or appoint the head of the center;

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(2) by September 1, 1981, develop a list of the business types (retail in the first year) currently doing business in the state;

(3) by September 1, 1981, develop a list of all licenses or permits required to do business in the state including the name of the licensing agency, the contact person in the agency, the cost of the license, ARM rules or statutes governing, and other pertinent data;

(4) by October 1, 1981, open the office; and

(5) by March 1, 1982, prepare in handbook form for dissemination to the public, the list of business types presently in operation in the state combined with the permits or licenses required for each.

Section 7. **Information availability.** The small business licensing coordination center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordination center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

Section 8. **New licenses, permits, or modifications.** Each state agency shall report to the coordination center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after the effective date of this act, together with the applicable forms and pertinent rules and information.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1981.

CHAPTER NO. 454

AN ACT TO INCREASE THE REIMBURSEMENT RATE FOR SCHOOL BUS AND INDIVIDUAL AND ISOLATED TRANSPORTATION COSTS; AMENDING SECTIONS 20-10-141 AND 20-10-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by bus mileage rates. (1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified

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driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the bus is used for transportation of eligible transportees:

(a) *60* cents in fiscal *1982* and *65* cents in fiscal *1983* and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional *2 ½* cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of *60* cents in fiscal *1982* and *65* cents in fiscal *1983* and each year thereafter per bus mile.

(3) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 2. Section 20-10-142, MCA, is amended to read:

"20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by *20* cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of

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one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), no reimbursement may be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product so obtained, and multiplying the difference by *20* cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and.

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be 1 ½ times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be *$5* for one eligible transportee and *$3* for each additional eligible transportee of the same household.

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(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district."

Approved April 20, 1981.

CHAPTER NO. 455

AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO USE A FOUR-WHEEL DRIVE VEHICLE FOR TRANSPORTATION UNDER CERTAIN CONDITIONS; PROVIDING THAT THE BOARD OF PUBLIC EDUCATION MAY GRANT PERMISSION FOR USE OF SUCH A VEHICLE; AND PROVIDING FOR A REIMBURSEMENT RATE; AMENDING SECTION 20-10-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-111, MCA, is amended to read:

"20-10-111. Duties of board of public education. (1) The board of public education, by and with the advice of the Montana division of motor vehicles and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. Such policies shall:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national commission on safety education; or

(ii) minimum standards adopted by the national highway safety bureau;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses shall have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish any other driver qualifications that may be deemed necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee

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which shall allow for the establishment of such areas without regard to the district boundary lines within the county;

(e) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in 20-10-105;

(f) prescribe any other policies for the operation of school buses which are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national commission on safety education;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the "rated capacity".

(2) The board of public education may grant permission to the trustees of any district to use for transportation a four-wheel drive vehicle capable of transporting eight passengers or less that meets the minimum standards for these vehicles as prescribed by the board of public education if this type of vehicle will not be used to transport more than eight pupils per trip.

(3) Whenever the board of public education grants the trustees of a district permission to use a four-wheel drive vehicle under the provisions of subsection (2), the reimbursement to the district shall be based on the on-schedule rate of 20 cents per mile.

(4) The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title."

Approved April 20, 1981.

CHAPTER NO. 456

AN ACT TO REVISE THE PHYSICAL THERAPY LICENSING LAW BY CLARIFYING THE QUALIFICATIONS OF AN APPLICANT; AND TO PROVIDE GUIDELINES AND RULEMAKING AUTHORITY FOR ISSUANCE OF A TEMPORARY LICENSE; AMENDING SECTIONS 37-11-303 AND 37-11-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-303, MCA, is amended to read:

"37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board *a written* examination *prescribed by the board and, if considered necessary, an oral interview* to determine *the* fitness *of the applicant to* practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307."

Section 2. Section 37-11-309, MCA, is amended to read:

"37-11-309. Temporary license. (1) On payment to the department of a fee not to exceed $100 which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) *The board may, upon receipt* of *an* application *for examination and upon receipt of a temporary license fee not to exceed $100,* issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. *This applicant must work under the direction, guidance, and observation of a licensed physical therapist.* This temporary license is available to an applicant only with respect to his first application. *The temporary* license *shall expire* when the board makes a final determination *on the applicant's examination scores.*

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses."

Approved April 20, 1981.

CHAPTER NO. 457

AN ACT TO REQUIRE THAT A VACANCY IN A MUNICIPAL ELECTED OFFICE BE FILLED BY THE CITY OR TOWN COUNCIL WITHIN 30 DAYS AND UNTIL A SUCCESSOR IS ELECTED TO FILL THE UNEXPIRED TERM OF THE OFFICE; AMENDING SECTION 7-4-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-4112, MCA, is amended to read:

"7-4-4112. Filling of vacancy. *(1)* When any vacancy occurs in any elective office, *this position shall be considered open and subject to nomination and election at the next general municipal election in the same*

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manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified.

(2) A vacancy in the office of alderman must be filled from the ward in which the vacancy exists."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1981.

CHAPTER NO. 458

AN ACT TO AMEND CONFLICTS OF INTEREST PROVISIONS TO ALLOW CONTRACTS WHENEVER GEOGRAPHICAL RESTRICTIONS WOULD MAKE A CONTRACT OTHERWISE UNAVAILABLE TO A LOCAL GOVERNMENT; AMENDING SECTION 2-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(d) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford

itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period."

Approved April 20, 1981.

CHAPTER NO. 459

AN ACT TO PROVIDE FOR THE RECORDING AND DISTRIBUTION OF SENTENCING DATA PERTAINING TO THE PERFORMANCE OF DISTRICT COURT JUDGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transmittal of sentencing data to supreme court — compilation.** (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

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(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

Approved April 20, 1981.

CHAPTER NO. 460

AN ACT TO GENERALLY REVISE THE PUBLIC HEALTH LAWS RELATING TO CLEAN INDOOR AIR; PROVIDING PENALTIES; AMENDING SECTIONS 50-40-103 AND 50-40-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms *open to the public.*

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(6) "Smoking area" means a designated area in which smoking is permitted.

(7) "Place of work" means an enclosed room where more than one employee works."

Section 2. Section 50-40-104, MCA, is amended to read:

"50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105, the proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; or

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(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or

(c) designate the entire area as a smoking area *by posting a sign that is clearly visible to the public stating this designation.*

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment."

Section 3. **Penalties.** A person who fails to designate or reserve a smoking or nonsmoking area in their establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than $25.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to section 3.

Approved April 20, 1981.

CHAPTER NO. 461

AN ACT TO INCREASE THE AMOUNT OF MONEY THAT MAY BE USED FOR OPERATION, DEVELOPMENT, AND MAINTENANCE OF FISHING ACCESSES; AMENDING SECTION 87-1-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-605, MCA, is amended to read:

"87-1-605. Fees used to purchase recreational facilities. (1) One dollar of the fee for Class A resident fishing license, $1 of the fee for Class B-4 nonresident 1-day fishing license, $5 of the fee for the Class B-3 nonresident 6-day fishing license, and $5 of the fee for the Class B nonresident fishing license shall be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land deemed necessary to provide recreational use thereof.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the moneys set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land deemed necessary to provide recreational use thereof but serve in addition to those

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funds. The moneys used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974."

Approved April 20, 1981.

CHAPTER NO. 462

AN ACT TO AUTHORIZE THE COUNTY COMMISSIONERS TO CREATE A CITIZEN ADVISORY COMMITTEE TO ADVISE THE COUNTY COMMISSIONERS ON PROPOSED AMENDMENTS TO ZONING REGULATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Zoning commission — appointment — duties.** (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, apply to section 1.

Became law without approval.

CHAPTER NO. 463

AN ACT TO ALLOW TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND 15-1-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Alternative remedy.** (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-401 or 15-1-402, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by

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the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the imposition of the tax. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under [section 2].

Section 2. **Procedure.** (1) Except as provided in subsection (2), an action pursuant to [section 1] is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under [section 1] may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under [section 1] may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to [section 1] if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) of this section does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under [section 1] all issues shall be tried by the court.

Section 3. **Remedy.** If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(1) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

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(2) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year; or

(3) such other remedy as the court considers appropriate.

Section 4. **Tax to be paid.** The taxes that are being challenged under [section 1] must be paid when due as a condition of continuing the action.

Section 5. Section 15-1-401, MCA, is amended to read:

"15-1-401. Payment of license fees under protest — action to recover. (1) Whenever any license fee or tax is demanded of any person for the use and benefit of the state of Montana and the same is considered unlawful by the person from whom the same is demanded, such person may *proceed under [section 1] or may* pay the same, or so much thereof as may be considered unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the license fee or tax.

(2) The person paying or his legal representative may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the license fee or tax to recover the same, without interest. Any action instituted to recover any license fee or tax paid under protest must be commenced and summons and copy of complaint served within 60 days after the date of payment thereof to the state agency or officer responsible for collecting the license fee or tax. If such action is decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in such action, refund such license fee or tax to the person in whose favor such judgment is rendered."

Section 6. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest — action to recover. (1) In all cases of levy of taxes, licenses, or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party *may proceed under [section 1] or* may, before such tax or license becomes delinquent, pay under written protest such portions of such tax or license deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid or against the county or municipality in whose behalf the same was collected and the department of revenue. Both the officers to whom the license fee or tax was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with summons and complaint within the time prescribed. Any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within 90 days after the date of payment of the same. When any such license or tax is payable in installments, the first installment portion of such tax or license as may be deemed unlawful may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall

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become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful may also be paid under written protest and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him. All such portions of licenses and taxes when so paid under protest shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit or action to recover the same. Nothing contained herein prohibits the investment of the moneys of this fund in the state unified investment program. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(2) If no action is commenced within the time herein specified or if such action be commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of such protested portions of the license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the license or tax, with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such license or tax and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest."

Section 7. Section 15-1-404, MCA, is amended to read:

"15-1-404. Other remedies superseded. The *remedies* hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the *remedies* hereby provided *are* deemed by the court to be inadequate."

Section 8. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 15, chapter 1, part 4, and the provisions of Title 15, chapter 1, part 4, apply to sections 1 through 4.

Section 9. **Effective date.** This act is effective on July 1, 1981.

Approved April 21, 1981.

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CHAPTER NO. 464

AN ACT TO CLARIFY AND ESTABLISH NOTICE AND PROTEST PROCEDURES RELATING TO FEES FOR REFUSE DISPOSAL DISTRICTS; AMENDING SECTIONS 7-13-204, 7-13-208, 7-13-209, 7-13-211, AND 7-13-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-204, MCA, is amended to read:

"7-13-204. Resolution of intention to create refuse disposal district. (1) Before creating any refuse disposal district, the commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands of said district, giving the boundaries thereof;

(d) the general character of the collection service;

(e) the *proposed fees to be charged for the service.*"

Section 2. Section 7-13-208, MCA, is amended to read:

"7-13-208. Notice of resolutions of intention and concurrence — hearing. (1) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and *proposed fees to be charged for the service*, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper and posted in three public places within the boundaries of the proposed district.

(3) A copy shall be mailed by first-class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published."

Section 3. Section 7-13-209, MCA, is amended to read:

"7-13-209. Right to protest. (1) At any time within 30 days after the date of the first publication of the notice provided for in 7-13-208, any owner of property liable to be assessed for said service may make written

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protest against the proposed service *or against the fees proposed to be charged for the service.*

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him."

Section 4. Section 7-13-211, MCA, is amended to read:

"7-13-211. Sufficient protest to bar proceedings. (1) If the protest against the proposed service is made by the owners of more than 50% of the family residential units in the proposed district, no further proceedings shall be taken by the commissioners.

(2) If the protest against the fees proposed to be charged is made by the owners of more than 50% of the family residential units in the proposed district, the board and commissioners shall hold a hearing to determine an acceptable fee. Following the hearing the commissioners may adopt the proposed fee or a different fee.

(3) Each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining percent of protest."

Section 5. Section 7-13-231, MCA, is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of said refuse disposal district, the board shall establish a fee for service, with approval of the county commissioners, *provided a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of such increase is given as provided in 7-13-208(1) and (2) and opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.*

(2) This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district."

Approved April 21, 1981.

CHAPTER NO. 465

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO MAKE FINANCIAL ASSISTANCE GRANTS TO COUNTIES FOR DISTRICT COURTS; AMENDING SECTION 7-6-2352, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2352, MCA, is amended to read:

"7-6-2352. State grants to district courts. (1) The department of administration *shall* make grants to the governing body of a county for the district courts for assistance, as provided in this section. The grants are to

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be made from funds appropriated to the department for that purpose. *If the department of administration approves grants in excess of the amount appropriated, each grant shall be reduced an equal percentage so the appropriation will not be exceeded.*

(2) The governing body of a county may apply to the department of administration for a grant by filing a written report *by July 31, for the previous fiscal year* stating *that the following conditions have occurred or will occur*:

(a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget, *because of expenses exceeding the sum derived from the mill levy provided for in 7-6-2511 arising from litigation in either civil or criminal matters, not including building, capital, and library maintenance, replacement, and acquisition, but including the costs associated with:*

(i) the impaneling and maintenance of juries;

(ii) the appearance of witnesses;

(iii) the fees and litigation-related expenses of attorneys appointed by a district court;

(iv) transcript prepared at the direction of a district court at county expense;

(v) salaries and fees of court reporters;

(vi) psychological and medical treatment or evaluations ordered by a district court at county expense;

(vii) the actual and necessary expenses of travel as limited by law for:

(A) jurors;

(B) witnesses;

(C) court reporters;

(D) defendants in criminal cases who are in custody;

(E) juveniles under the supervision of a district court; or

(F) law enforcement or probation officers acting in furtherance of a district court order; and

(viii) other, similar expenses created by and required for the conduct of and preparation for a trial in district court;

(b) that all expenditures from the district court fund have been lawfully made;

(c) that no transfers from the district court fund have been or will be made to any other fund;

(d) that no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351; and

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(e) any other information required by the department of administration.

(3) *The* department of administration shall give notice to the district court and the county governing body of its intention to allow *grants by August 31 for the previous fiscal year.*

(4) Within 10 days of receiving notice from the department of administration that a grant will be made, the district court shall adopt *a* budget and transmit it to the county governing body.

(5) After receiving notice of the county governing body's approval of the budget, the department of administration shall cause a warrant to be issued to the treasurer of the county in which the district court is located for the total amount stated in the approved budget.

(6) The grant received by the county shall be placed in *a* fund account to be kept separate from the district court fund.

(7) After depleting the district court fund, the county treasurer may make disbursements from the fund account. At the close of its fiscal year, the county treasurer shall return to the department of administration any amounts remaining in the fund account."

Section 2. **Effective date.** This act is effective July 1, 1981.

Approved April 21, 1981.

CHAPTER NO. 466

AN ACT CHANGING THE AUTOMATIC EFFECTIVE DATE OF NONAPPROPRIATIONS STATUTES FROM JULY 1 TO OCTOBER 1; AMENDING SECTION 1-2-201, MCA; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-201, MCA, is amended to read:

"1-2-201. Statutes — effective date. (1) Every statute *adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose,* takes effect on the first day of *October* following its passage and approval *unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.*

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

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CHAPTER NO. 467

AN ACT TO ADOPT A NEW DEFINITION OF MARINE, INLAND MARINE, AND TRANSPORTATION INSURANCE; DESCRIBING THE KINDS OF RISKS AND COVERAGES THAT MAY BE INSURED BY MARINE, INLAND MARINE, OR TRANSPORTATION INSURANCE POLICIES; AMENDING SECTIONS 2-18-809, 33-1-209, 33-2-705, AND 33-17-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Nationwide Inland Marine Definition Act".

Section 2. **Purpose.** (1) The purpose of [sections 1 through 9] is to describe the kinds of risks and coverages which may be classified or identified under state insurance laws as marine, inland marine, or transportation insurance, but [sections 1 through 9] do not include all of the kinds of risks and coverages which may be written, classified, or identified under marine, inland marine, or transportation insuring powers. [Sections 1 through 9] may not be construed to mean that the kinds of risks and coverages described herein are solely marine, inland marine, or transportation insurance in all instances.

(2) [Sections 1 through 9] may not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and licenses whether used separately, in combination, or otherwise.

Section 3. **Imports.** Imports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Imports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an import and the proper subject of marine, inland marine, or transportation insurance as long as the property remains segregated in such a way that it can be identified and has not become incorporated into and mixed with the general mass of property in the United States; property ceases to be an import and the proper subject of marine, inland marine, or transportation insurance when it has been:

(a) sold and delivered by the importer, factor, or consignee;

(b) removed from its place of storage and placed on sale as part of an importer's stock in trade at a point of sale or distribution; or

(c) delivered for manufacture, processing, or change in form to premises of the importer or another, to be used for such purposes.

Section 4. **Exports.** Exports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Exports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

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(2) Property is an export and the proper subject of marine, inland marine, or transportation insurance when designated or while being prepared for export and remains an export unless diverted for domestic trade. If the property is diverted for domestic trade, the provisions of [section 5] apply. This section does not apply to long-established methods of insuring certain commodities such as cotton.

Section 5. **Domestic shipments.** Domestic shipments may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Domestic shipments on consignment for sale, distribution, exhibit, trial, approval, or auction may be covered while in transit, while in the custody of others, and while being returned, except that the policy may not cover property while it is on premises owned, leased, or operated by the consignor.

(2) Domestic shipments not on consignment may be covered if the coverage of the issuing companies includes hazards of transportation beginning and ending within the United States. Such shipments are not covered at the manufacturing premises or after arrival at premises owned, leased, or operated by the assured or the purchaser.

Section 6. **Instrumentalities of transportation and commerce.** Bridges, tunnels, and other instrumentalities of transportation and communication (excluding buildings and improvements, furniture, furnishings, fixed contents, and supplies held in storage) may be covered by marine, inland marine, and transportation policies. This category includes:

(1) bridges, tunnels, and other similar instrumentalities, including auxiliary facilities and equipment attendant thereto;

(2) piers, wharves, docks, slips, drydocks, and marine railways;

(3) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(4) power transmission, telephone, and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(5) radio and television communication equipment in use as such, including towers and antennas with auxiliary equipment, and appurtenant electrical operating and control apparatus; and

(6) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

Section 7. **Personal property.** Risks generally covered by personal property floaters covering individuals or items of personal property may be covered by marine, inland marine, and transportation policies. This category includes:

(1) personal effects floater policies;

(2) personal property floaters;

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(3) government service floaters;

(4) personal fur floaters;

(5) personal jewelry floaters;

(6) wedding present floaters for a period not exceeding 90 days after the date of the wedding;

(7) silverware floaters;

(8) fine arts floaters covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit;

(9) stamp and coin floaters;

(10) musical instrument floaters. For purposes of this section, radios, televisions, record players, and combinations thereof are not musical instruments.

(11) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use) covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(12) installment sales and leased property policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract, or installment sales contract or leased but excluding motor vehicles designed for highway use. Such policies must cover property in transit but shall not extend beyond the termination of the seller's or lessor's interest; and

(13) live animal floaters.

Section 8. **Commercial property.** Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. Such policies may include coverage of such furniture, fixtures, and tenant assured's interest in such improvements of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel about with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) salesmen's samples floaters;

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(7) exhibition policies on property while it is on exhibition and in transit to or from such exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for an awaiting specific installation, building, renovating, or repairing. Such coverage is limited to builders' risks or installation risks where perils in addition to fire and extended coverage are to be insured. If written for the account of the owner, the coverage ceases upon completion of work and acceptance thereof; or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use) covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use such property for which it was manufactured or created. Such policies may not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(11) property in transit to or from and in the custody of bailees (not owned, controlled, or operated by the bailor), but such policies may not cover the bailee's property at his premises.

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the seller's or lessor's interest. This subsection does not include machinery and equipment under certain "leaseback" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer, if:

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(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as such;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection.

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored therein;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

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(23) electronic data processing policies.

Section 9. **Exceptions.** Unless otherwise permitted, nothing in [sections 3 through 9] may be construed to permit marine, inland marine, or transportation insurance policies to cover:

(1) storage of an assured's merchandise, except as specifically provided;

(2) merchandise in the course of manufacture which is the property of and on the premises of the manufacturer;

(3) furniture, fixtures, and improvements to buildings; or

(4) money or securities in safes, vaults, safety deposit vaults, or banks or on the assured's premises, except while in the course of transportation.

Section 10. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, *authorized* in 33-1-209 *and [sections 1 through 9]*; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212."

Section 11. Section 33-1-209, MCA, is amended to read:

"33-1-209. Marine protection and indemnity and wet marine insurance. (1) Marine insurance includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

(2) For the purposes of this code wet marine and transportation insurance is that part of marine insurance which includes only:

(a) insurance upon vessels, crafts, and hulls and of interests therein or with relation thereto;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

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(c) insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

(d) insurance of personal property and interests therein, in course of exportation from or importation into any country and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation while being prepared for and while awaiting shipment and during any delays, storage, transshipment, or reshipment incident thereto."

Section 12. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection *(4)* below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes only the risk portion of the charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾ % of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼ % of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾ % of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼ % of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾ % of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of 2 ¾ % of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine, *inland marine,* and transportation insurance, *authorized* in 33-1-209 *and [sections 1 through 9]*, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the

report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Section 13. Section 33-17-504, MCA, is amended to read:

"33-17-504. Issuing license — limitations. The commissioner may issue an insurance consultant's license to any natural person who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, *and [sections 1 through 9],* as specified in such license."

Section 14. **Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33 apply to sections 1 through 9.

Approved April 21, 1981.

CHAPTER NO. 468

AN ACT TO PROVIDE FOR TRIAL OF AN OFFENSE IN ANY COUNTY WHEREIN IS COMMITTED AN ACT OR OFFENSE THAT IS PART OF A COMMON SCHEME; AMENDING SECTION 46-3-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-3-102, MCA, is amended to read:

"46-3-102. When offense committed partly in one and partly in another county. *When* two or more acts are requisite to the commission of any offense *or when two or more acts or offenses are committed in furtherance of a common scheme,* the trial may be in any county in which any of such acts *or offenses* occur."

Approved April 21, 1981.

CHAPTER NO. 469

AN ACT TO PROVIDE FOR DISCLOSURE OF YOUTH ARREST RECORDS AND YOUTH COURT PROCEEDINGS AND FILES IN THOSE CASES INVOLVING OFFENSES THAT WOULD BE PUNISHABLE AS A FELONY IF THE YOUTH WERE AN ADULT; AMENDING SECTIONS 41-5-521, 41-5-601, 41-5-602, AND 41-5-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing *is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.*

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

Section 2. Section 41-5-601, MCA, is amended to read:

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"**41-5-601. Publicity.** *(1)* No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in *subsection (2).*

(2) When a petition is filed under this section, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult."

Section 3. Section 41-5-602, MCA, is amended to read:

"**41-5-602. Law enforcement records.** (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public *unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or* unless *inspection is* ordered by the court.

(2) Inspection of law enforcement records concerning a youth, *which records are not open to public inspection under subsection (1),* is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel."

Section 4. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All court findings, orders, judgments, and the legal and social files and records of the court, probation services, and law enforcement agencies pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of

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records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(5) This section shall not apply to youth traffic records *or to records directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601.*"

Approved April 21, 1981.

CHAPTER NO. 470

AN ACT TO TERMINATE THE BOARD OF PODIATRY EXAMINERS AND TRANSFER REGULATION OF PODIATRISTS TO THE BOARD OF MEDICAL EXAMINERS; ADDING A PODIATRIST TO THE BOARD OF MEDICAL EXAMINERS; AUTHORIZING A PODIATRIST TO ADMINISTER DRUGS; REMOVING STATUTORY PASSING GRADE ON EXAMINATION; MODIFYING PENALTY PROVISIONS; PROVIDING FOR TRANSFER OF FUNDS AND RECORDS; CONTINUING EXISTING RULES; AMENDING SECTIONS 2-15-1605, 37-6-101, 37-6-302, 37-6-303, AND 37-6-312, MCA; REPEALING SECTIONS 2-15-1608 AND 37-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Podiatry Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1605, MCA, is amended to read:

"**2-15-1605. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of *eight* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) six members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy; *and*

(c) one member who is a licensed podiatrist.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least 5 years and shall have been a resident of this state for at least 5 years; however, the 5-year requirement of practice and residency shall be waived for the initial term of appointment of the member having the degree and license of doctor of osteopathy.

(5) Each member shall serve for a term of 7 years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-6-101, MCA, is amended to read:

"37-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of *medical* examiners provided for in *2-15-1605.*

(4) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16."

Section 3. **Administration of drugs.** A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

Section 4. Section 37-6-302, MCA, is amended to read:

"37-6-302. Qualifications for licensure — exemptions from examination. (1) Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board and have successfully passed the examination.

(2) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the

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practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of $50 to the department.

(3) A license may be granted, at the discretion of the board and upon payment of $50 to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board."

Section 5. Section 37-6-303, MCA, is amended to read:

"37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license.

(2) An examination and license fee of $35 shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination."

Section 6. Section 37-6-312, MCA, is amended to read:

"37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter *is guilty of a misdemeanor and on conviction* shall be fined *not less than $250 or more than $1,000 or imprisoned* in the county jail *for not less than 90 days or more than 1 year, or both fined and imprisoned.*"

Section 7. **Transfer of funds and records.** By the effective date of this act, all funds and records of the board of podiatry examiners shall be transferred to the board of medical examiners.

Section 8. **Rules remain in effect.** Existing rules of the board of podiatry examiners remain in effect unless amended or repealed by the board of medical examiners.

Section 9. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 37, chapter 6, part 1, and the provisions of Title 37, chapter 6, apply to section 3.

Section 10. **Repealer.** Sections 2-15-1608 and 37-6-201, MCA, are repealed.

Section 11. **Effective date.** This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of podiatry examiners.

Approved April 21, 1981.

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CHAPTER NO. 471

AN ACT TO PROVIDE FOR COUNTY AND MUNICIPAL REGULATION OF BOXING AND WRESTLING MATCHES; REQUIRING PERMITS THEREFOR; REQUIRING SAFETY RULES; AUTHORIZING THE COLLECTION OF TAXES ON THE PROCEEDS OF SUCH EVENTS; REPEALING SECTION 7-21-4211, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Local government permits for boxing and wrestling matches — safety — tax.** (1) No person may sponsor or promote any prizefight or public sparring, boxing, or wrestling match or exhibition without a permit issued and in effect as provided in this section. No person may provide physical facilities for or act as a second or principal in any prizefight or public sparring, boxing, or wrestling match or exhibition, knowing or having reasonable cause to believe that the sponsor or promotor of such event does not have a permit issued and in effect as provided in this section.

(2) A local government may permit and regulate prizefights or public sparring, boxing, or wrestling matches or exhibitions subject to the following:

(a) The local government governing body must, prior to the issuance of any permit, adopt rules, by ordinance or resolution, governing prizefights and public sparring, boxing, and wrestling matches. The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the principals. The rules shall require a physical examination of each principal prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter.

(b) The local government governing body shall require a permittee to provide a surety bond or cash deposit in an amount determined sufficient by the governing body. Any person injured by the willful, malicious, or wrongful act of the permittee may bring an action on the surety bond or deposit in his own name to recover damages suffered as a result of such act by the permittee.

(c) The local government may charge the permittee a fee, commensurate with the cost of providing the certificate.

(d) For an event under this section, only one permit is required. A county shall regulate such events within the county but not within a municipality, and a municipality shall regulate such events within its municipal boundaries.

(3) A local government may levy a tax, at a rate determined by the local government governing body, on the gross proceeds of an event for

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which they have issued a permit under the provisions of this section. The proceeds of the tax shall be paid into the general fund of the local government.

(4) Nothing in this section may be construed to require a permit or tax for sparring, boxing, or wrestling matches or exhibitions held as a part of an organized amateur athletic program or as a part of the athletic program of a school or college. However, such an event must be conducted fairly and with reasonable measures to protect the health and safety of the participants.

(5) Any person who violates any provision of this section is guilty of a misdemeanor and is punishable as provided in 46-18-212.

Section 2. **Repealer.** Section 7-21-4211, MCA, is repealed.

Section 3. **Effective date.** This act is effective July 1, 1981.

Approved April 21, 1981.

CHAPTER NO. 472

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC EMPLOYEES SO AS TO ESTABLISH A STATE INVESTMENT ACCOUNT; TO AUTHORIZE LOCAL GOVERNMENTS TO PARTICIPATE IN THE STATE DEFERRED COMPENSATION PROGRAM; AND TO AUTHORIZE THE PLAN ADMINISTRATOR TO ASSESS ADMINISTRATIVE COSTS AGAINST THE PROGRAM; AMENDING SECTIONS 19-2-101 THROUGH 19-2-103, 19-2-201 THROUGH 19-2-204, MCA; AND REPEALING SECTION 19-2-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-101, MCA, is amended to read:

"19-2-101. Definitions. For the purposes of this chapter, *unless a different meaning is plainly implied by the context, the following definitions apply:*

(1) "Administrator" means the department of administration created by 2-15-1001 or an appropriate officer of a political subdivision.

(2) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(3) "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

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(4) "Department" means the department of administration created by 2-15-1001.

(5) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(6) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(7) "Fund" means the state deferred compensation investment account.

(8) "Participant" means an employee enrolled in the plan.

(9) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana."

Section 2. Section 19-2-102, MCA, is amended to read:

"19-2-102. Deferred compensation programs permitted — rules. *(1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.*

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of his compensation for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The amount of compensation deferred under this chapter may be used to purchase:

(a) shares in a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund shall be credited to the fund. These funds may be commingled with other state investment funds, but separate accounts must be maintained for participants in the state deferred compensation investment fund. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

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(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; or

(d) any combination of subsections (a), (b), or (c) above, as specified by the participant. The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator.

(5) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(6) The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 3. Section 19-2-103, MCA, is amended to read:

"19-2-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state or *a* political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the *participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency.* For purposes of this chapter any qualified private pension plans now in existence shall qualify."

Section 4. Section 19-2-201, MCA, is amended to read:

"19-2-201. Department authorized to make contracts with political subdivisions. *(1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the department and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.*

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the department authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

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(b) The contract must specify that the political subdivision agrees that the department is the administrator of the deferred compensation program and agrees to the rules and conditions established by the department for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts."

Section 5. Section 19-2-202, MCA, is amended to read:

"19-2-202. Administration of program. The deferred compensation program shall be *administered by* the department or the appropriate officer designated by *a* political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. *The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-2-102. All contracts with marketing representatives must provide that all options in 19-2-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-2-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund."*

Section 6. **Functions of advisory council.** (1) The department shall meet and consult with the advisory council before negotiating, contracting, or modifying deferred compensation plans.

(2) The advisory council shall meet at least quarterly to review existing deferred compensation plans and to advise the department on the administration of the program.

Section 7. Section 19-2-203, MCA, is amended to read:

"19-2-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the department or *a* political subdivision is hereby authorized to make payments to *eligible deferred compensation* plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state *or a* political subdivision."

Section 8. Section 19-2-204, MCA, is amended to read:

"19-2-204. Public entity not to be liable. There shall be no financial liability of the state or *a* political subdivision for any *investment* losses incurred by any *eligible deferred compensation* plan established under this chapter."

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Section 9. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 19, chapter 2, part 2, and the provisions of Title 19, chapter 2, apply to section 6.

Section 10. **Repealer.** Section 19-2-205, MCA, is repealed.

Approved April 21, 1981.

CHAPTER NO. 473

AN ACT TO CONTINUE THE MONTANA FOLKLIFE PROJECT UNDER THE MONTANA ARTS COUNCIL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 531, Laws of 1979, is amended to read:

"**Section 6. Expiration date.** This act expires on July 1, *1983.*"

Approved April 21, 1981.

CHAPTER NO. 474

AN ACT TO PROVIDE FOR UNIFORM COMPENSATION AND TRAVEL EXPENSES FOR THE BOARDS OF COUNTY PRINTING, VETERANS' AFFAIRS, ATHLETICS, MEDICAL EXAMINERS, DENTISTS, OSTEOPATHIC PHYSICIANS, PODIATRY EXAMINERS, PHARMACISTS, NURSING, NURSING HOME ADMINISTRATORS, OPTOMETRISTS, PHYSICAL THERAPY EXAMINERS, CHIROPRACTORS, RADIOLOGIC TECHNOLOGISTS, SPEECH PATHOLOGISTS AND AUDIOLOGISTS, HEARING AID DISPENSERS, PSYCHOLOGISTS, VETERINARIANS, MORTICIANS, BARBERS, COSMETOLOGISTS, MASSAGE THERAPISTS, SANITARIANS, PUBLIC ACCOUNTANTS, REALTY REGULATION, ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, PLUMBERS, AND THE STATE ELECTRICAL BOARD, STATE BANKING BOARD, AND THE COMMISSION FOR HUMAN RIGHTS; AMENDING SECTIONS 2-15-1102, 2-15-1706, 2-15-2202, 23-3-102, 32-1-201, 37-3-206, 37-4-203, 37-4-204, 37-5-202, 37-6-201, 37-7-202, 37-8-203, 37-9-201, 37-10-203, 37-11-203, 37-12-202, 37-14-201, 37-15-203, 37-16-203, 37-17-201, 37-18-203, 37-19-201, 37-30-202, 37-31-202, 37-33-202, 37-40-202, 37-50-202, 37-51-205, 37-65-202, 37-66-201, 37-67-203, 37-68-202, AND 37-69-203, MCA.

WHEREAS, during its sunset reviews of licensing and regulatory boards the Legislative Audit Committee noted that compensation and travel expenses for the boards vary considerably from board to board; and

WHEREAS, the various boards have very similar duties and responsibilities.

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THEREFORE, it is the intent of this act to provide for the payment of uniform compensation and travel expenses for members of state licensing and regulatory boards.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $25 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-501, for each day in which 6 or more hours are spent on official board business. Ex officio board members may not receive compensation but shall receive travel expenses.

Section 2. Section 2-15-1102, MCA, is amended to read:

"2-15-1102. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;

(b) two county commissioners;

(c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed *in the same manner and amount* as *provided for in [section 1] for boards allocated to the department of professional and occupational licensing.*"

Section 3. Section 2-15-1706, MCA, is amended to read:

"2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 *but its members shall be compensated and receive travel expenses as provided for in [section 1].*

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."

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Section 4. Section 2-15-2202, MCA, is amended to read:

"2-15-2202. Board of veterans' affairs. (1) There is a board of veterans' affairs.

(2) The board consists of five members appointed by the governor. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall receive compensation and travel expenses as provided for in [section 1].

(4) Each member shall serve for a term of 5 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 5. Section 23-3-102, MCA, is amended to read:

"23-3-102. Board of athletics. The members of the board of athletics shall *receive compensation and* travel expenses as provided for in *[section 1],* to be paid by the state treasurer on warrant properly drawn, out of the proceeds of the tax collected under this chapter. Before April 1 of each year the board shall elect one of its number chairman, shall adopt a seal for the board, and may adopt rules for the administration of its office. Two of the members of the board constitute a quorum to do business, and the concurrence of at least two members is necessary to render a choice or decision by the board."

Section 6. Section 32-1-201, MCA, is amended to read:

"32-1-201. State banking board — secretary — meetings — per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

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(7) The board members shall *receive compensation* and travel expenses *in the same manner and amount* as provided for in *[section 1] for boards allocated to the department of professional and occupational licensing.* The costs and expenses of the board shall be legitimate charges of the department."

Section 7. Section 37-3-206, MCA, is amended to read:

"37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation *and* travel expenses as provided for in *[section 1]*."

Section 8. Section 37-4-203, MCA, is amended to read:

"37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall *receive compensation and travel expenses as provided for in [section 1].*

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund the emergency moneys provided under 37-4-307. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom."

Section 9. Section 37-4-204, MCA, is amended to read:

"37-4-204. Affiliation with national association authorized — delegate — expenses allowed. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association."

Section 10. Section 37-5-202, MCA, is amended to read:

"37-5-202. Compensation of members — deposit of fees. (1) Each of the members of the board *is entitled to* receive compensation *and* travel expenses as provided for in *[section 1].*

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6)."

Section 11. Section 37-6-201, MCA, is amended to read:

"37-6-201. Compensation of board members — expenses. Each member of the board shall receive *compensation* and travel expenses as provided for in *[section 1].* Other contingent expenses necessarily incurred shall be paid by the state department in the same manner as other expenses of the state board of podiatry examiners."

Section 12. Section 37-7-202, MCA, is amended to read:

"37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in *[section 1]*."

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Section 13. Section 37-8-203, MCA, is amended to read:

"37-8-203. Compensation of members — expenses. Each member of the board shall *receive compensation* and travel expenses as provided in *[section 1]*."

Section 14. Section 37-9-201, MCA, is amended to read:

"37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) *Each board member shall receive compensation and* travel expenses as provided for in *[section 1]*."

Section 15. Section 37-10-203, MCA, is amended to read:

"37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board *is entitled to* receive compensation and travel expenses as provided for in *[section 1]*.

(2) Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6)."

Section 16. Section 37-11-203, MCA, is amended to read:

"37-11-203. Travel expense — deposit of fees. (1) Each board member shall *receive compensation and* travel expenses as provided for in *[section 1]*.

(2) All fees collected by the department shall be deposited in the earmarked revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the earmarked revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the earmarked account designated as the "physical therapist account"."

Section 17. Section 37-12-202, MCA, is amended to read:

"37-12-202. Compensation of members — expenses. The members of the board shall receive *compensation and* travel expenses as provided for in *[section 1]*."

Section 18. Section 37-14-201, MCA, is amended to read:

"37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall *receive compensation and* travel expenses as provided for in *[section 1]*.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business."

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Section 19. Section 37-15-203, MCA, is amended to read:

"37-15-203. Compensation and expenses. Each board member shall receive *compensation and* travel expenses as provided for in *[section 1]*."

Section 20. Section 37-16-203, MCA, is amended to read:

"37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel *expenses* as provided for in *[section 1]*."

Section 21. Section 37-17-201, MCA, is amended to read:

"37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive *compensation and* travel expenses as provided for in *[section 1]*.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal."

Section 22. Section 37-18-203, MCA, is amended to read:

"37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive *compensation and* travel expenses as provided for in *[section 1]*.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection."

Section 23. Section 37-19-201, MCA, is amended to read:

"37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members *are entitled to receive* compensation and travel expenses as provided for in *[section 1]*."

Section 24. Section 37-30-202, MCA, is amended to read:

"37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation *and* travel expenses as provided for in *[section 1]*."

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Section 25. Section 37-31-202, MCA, is amended to read:

"37-31-202. Compensation of members — expenses. Each member of the board *is entitled to* receive compensation *and* travel expenses as provided for in *[section 1]*."

Section 26. Section 37-33-202, MCA, is amended to read:

"37-33-202. Compensation of members — expenses. (1) The members of the board shall receive compensation and travel expenses as provided for in *[section 1]*.

(2) Compensation, mileage, and other expenses necessarily connected with the board shall be paid only out of the earmarked revenue fund."

Section 27. Section 37-40-202, MCA, is amended to read:

"37-40-202. Compensation — expenses. Members of the board shall receive compensation *and* travel expenses as provided for in *[section 1]*."

Section 28. Section 37-50-202, MCA, is amended to read:

"37-50-202. Compensation of members — expenses. Each member of the board *is entitled to receive compensation and travel expenses as provided for in [section 1]*."

Section 29. Section 37-51-205, MCA, is amended to read:

"37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in *[section 1]*."

Section 30. Section 37-65-202, MCA, is amended to read:

"37-65-202. Compensation of board members — expenses. Each member of the board is *entitled to receive compensation* and travel expenses as provided for in *[section 1]*."

Section 31. Section 37-66-201, MCA, is amended to read:

"37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its public representative members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) *The* members of the board *are entitled to* receive *compensation and* travel expenses as *provided* in *[section 1]*."

Section 32. Section 37-67-203, MCA, is amended to read:

"37-67-203. Compensation of board members — expenses. Each member of the board shall receive *compensation and* travel expenses as provided for in *[section 1]*."

Section 33. Section 37-68-202, MCA, is amended to read:

"37-68-202. Compensation and expenses of board members. Each member of the board shall receive *compensation and* travel expenses as provided for in *[section 1]*."

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Section 34. Section 37-69-203, MCA, is amended to read:

"37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in *[section 1]*."

Section 35. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 1, part 1.

Approved April 21, 1981.

CHAPTER NO. 475

AN ACT TO ADOPT SUBSTANTIALLY ALL OF THE REVISIONS TO THE MODEL BUSINESS CORPORATION ACT THAT WERE RECENTLY RECOMMENDED BY THE AMERICAN BAR ASSOCIATION; AMENDING SECTIONS 35-1-102, 35-1-108, 35-1-109, 35-1-202, 35-1-206 THROUGH 35-1-209, 35-1-211 THROUGH 35-1-214, 35-1-301, 35-1-401, 35-1-402, 35-1-404, 35-1-406 THROUGH 35-1-409, 35-1-501, 35-1-506, 35-1-508, 35-1-509, 35-1-511, 35-1-601, 35-1-602, 35-1-605 THROUGH 35-1-607, 35-1-610 THROUGH 35-1-612, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-901, 35-1-1002, 35-1-1006 THROUGH 35-1-1009, 35-1-1015, 35-1-1017, 35-1-1101, 35-1-1202, AND 35-1-1205, MCA; AND REPEALING SECTIONS 35-1-608, 35-1-613 THROUGH 35-1-616, 35-1-701 THROUGH 35-1-705, 35-1-802, AND 35-1-811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

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(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation *and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and such other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.*

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 2. Section 35-1-108, MCA, is amended to read:

"35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

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(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) lend money *and use its credit to* assist its employees;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) transact any lawful business in aid of *governmental policy*;

(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 3. Section 35-1-109, MCA, is amended to read:

"35-1-109. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof."

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Section 4. **Indemnification of directors and officers.** (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement,

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conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)(i), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a)(i) or (a)(ii) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such

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committee cannot be established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

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(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or of an employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

Section 5. **Loans to employees and directors.** A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Section 6. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, *which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter*;

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(d) the aggregate number of shares which the corporation shall have authority to issue *and*, if such shares are to be divided into classes, the number of shares of each class;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

Section 7. Section 35-1-206, MCA, is amended to read:

"35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

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(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) *provide, change, or eliminate any provision with respect to the par value of any shares or class of shares*;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(h) change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;

(i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

(j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

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(o) grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized."

Section 8. Section 35-1-207, MCA, is amended to read:

"35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) *If shares have been issued, the* board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. *If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.*

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting."

Section 9. Section 35-1-208, MCA, is amended to read:

"35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

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(1) increase or decrease the aggregate number of authorized shares of such class;

(2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

(3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

(4) change the designations, preferences, limitations, or relative rights of the shares of such class. *If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.*

(5) change the shares of such class into the same or a different number of shares of the same class or another class or classes;

(6) create a new class of shares having rights and preferences prior and superior to the shares of such class or increase the rights and preferences *or the number of authorized shares* of any class having rights and preferences prior or superior to the shares of such class;

(7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(8) limit or deny existing preemptive rights of the shares of such class;

(9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment — contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the *amendments* so adopted;

(3) the date of the adoption of the amendment by the shareholders *or the board of directors when no shares have been issued*;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such

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amendment, respectively, *or, if no shares have been issued, a statement to that effect*;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected."

Section 11. Section 35-1-211, MCA, is amended to read:

"35-1-211. Effect of certificate of amendment. (1) *An amendment becomes effective upon* the issuance of the certificate of amendment by the secretary of state *or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.*

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason."

Section 12. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

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(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) *The amendment becomes effective upon* the issuance of the certificate of amendment by the secretary of state *or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment,* without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 13. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation

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shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected."

Section 14. Section 35-1-214, MCA, is amended to read:

"35-1-214. Bylaws — power in directors — contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, *subject*

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to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation."

Section 15. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. *(1)* The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, *except that this provision does not apply if the applicant files with the secretary of state either of the following:*

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state."

Section 16. Section 35-1-401, MCA, is amended to read:

"35-1-401. Board of directors. *(1) All corporate powers shall be exercised by or under authority of and the* business and affairs of a corporation shall be managed *under the direction of* a board of directors *except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation.* Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles

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of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action."

Section 17. Section 35-1-402, MCA, is amended to read:

"35-1-402. Number, election, and term of directors. (1) The *board* of directors of a corporation shall *consist of one or more members. The* number of directors shall be fixed by *or in the manner provided in the articles of incorporation or* the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to *or in the manner provided in the articles of incorporation or* the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence

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of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified."

Section 18. Section 35-1-404, MCA, is amended to read:

"35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors *or any committee designated thereby* may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors *or any committee designated thereby* shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors *or any committee designated thereby* need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting."

Section 19. Section 35-1-406, MCA, is amended to read:

"35-1-406. Action by directors without a meeting. (1) *Unless otherwise provided by the articles of incorporation or bylaws, any* action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors *or of a committee* may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors *or all of the members of the committee, as the case may be,* entitled to vote *on* the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter."

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Section 20. Section 35-1-407, MCA, is amended to read:

"35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, *except that no* such committee shall have the authority *to:*

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

(2) The designation of any such committee, the delegation thereto of authority, *or the action by such committee pursuant to such authority does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances."*

Section 21. Section 35-1-408, MCA, is amended to read:

"35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the

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board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. *Any director or the* entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part."

Section 22. Section 35-1-409, MCA, is amended to read:

"35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities, *a director* who *votes* for or *assents* to *any* distribution contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, *unless he complies with the standard provided in this chapter for the performance of the duties of directors,* be liable to the corporation, *jointly and severally with all other directors so voting or assenting,* for the amount or value of such *distribution* in excess of the amount of such distribution which could have been *made* without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(2) Any director against whom a claim shall be asserted under or pursuant to this section for the *making* of a distribution and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such *distribution,* knowing such distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from *any* other directors who voted for or assented to the action upon which the claim is asserted *and who did not comply with the standard provided in this chapter for the performance of the duties of a director.*"

Section 23. **Director — conflicts of interest.** (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is

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either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

Section 24. Section 35-1-501, MCA, is amended to read:

"35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. *If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of business may, on application of any shareholder, summarily order a meeting to be held.* Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than *one-tenth* of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws."

Section 25. Section 35-1-506, MCA, is amended to read:

"35-1-506. Voting of shares — proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the

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shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(3) *(a)* A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

(b) No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. *Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.*

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the

contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

Section 26. Section 35-1-508, MCA, is amended to read:

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"35-1-508. Voting trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. *Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the corporation at its registered office.*

(2) The counterpart of the voting trust agreement *and the copy of such record* so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and *such counterpart and such copy of such record* shall be subject to examination by any holder of *record of* voting trust *certificates*, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts."

Section 27. Section 35-1-509, MCA, is amended to read:

"35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote *of shareholders* and may be stated *as such* in any articles or document filed with the secretary of state under this chapter."

Section 28. Section 35-1-511, MCA, is amended to read:

"35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation."

Section 29. **Control of directors by shareholders.** (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them

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all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision, shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

Section 30. Section 35-1-601, MCA, is amended to read:

"35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the *Constitution* of *the State of* Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

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(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors."

Section 31. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and,

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within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 32. Section 35-1-605, MCA, is amended to read:

"35-1-605. Issuance of shares. *Subject to any restrictions in the articles of incorporation:*

(1) shares may be issued for such consideration *as may be authorized by the board of directors establishing a price in money or other consideration, a minimum price, general formula, or method by which the price will be determined; and*

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends

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or splits, and any such transaction does not require consideration provided that no such issuance of shares of any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made."

Section 33. Section 35-1-606, MCA, is amended to read:

"**35-1-606. Modes of payment for shares.** (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, *subject to the provisions of 35-1-604,* such shares shall be nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

Section 34. Section 35-1-607, MCA, is amended to read:

"**35-1-607. Stock rights and options.** (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive."

Section 35. Section 35-1-610, MCA, is amended to read:

"**35-1-610. Shares represented by certificates and uncertificated shares.** (1) The shares of a corporation shall be represented by certificates *or shall be uncertificated shares. Certificates shall be* signed by the *chairman or vice-chairman of the board of directors or*

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the president or a vice-president and *by the treasurer or an assistant treasurer or* the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. *Any or all of the* signatures upon a certificate may be *facsimiles.* In case any officer, *transfer agent, or registrar* who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, *transfer agent, or registrar* before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, *transfer agent, or registrar* at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents.

(4) No certificate shall be issued for any share until *the consideration established for its issuance has been paid.*

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical."

Section 36. Section 35-1-611, MCA, is amended to read:

"35-1-611. Issuance of fractional shares or scrip. A corporation may:

(1) issue *fractions of a* share, *either represented by a certificate or uncertificated;*

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share *or an uncertificated full share* upon the surrender of such scrip aggregating a full share. A certificate for a fractional share *or an uncertificated fractional share* shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares *or uncertificated full shares* before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable."

Section 37. Section 35-1-612, MCA, is amended to read:

"35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the *power* to acquire its own shares. *All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.*

(2) *If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:*

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

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(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative."

Section 38. **Restriction on transfer of shares.** (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

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Section 39. **Distributions to shareholders.** (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

Section 40. Section 35-1-801, MCA, is amended to read:

"35-1-801. Procedure for merger, consolidation, and share exchange. (1) *(a)* Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(ii) the terms and conditions of the proposed merger;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(v) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation, through a voluntary exchange or otherwise, by agreement with the shareholders."

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Section 41. Section 35-1-803, MCA, is amended to read:

"35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, *in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange,* upon approving such plan of merger, plan of consolidation, *or exchange,* shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation, *or exchange.* A copy or a summary of the plan of merger, consolidation, *or exchange,* as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class *or, in the case of an exchange, if the class is included in the exchange.*

(4) After *the* approval by a vote of the shareholders of each *of these corporations* and at any time prior to the filing of the articles of merger, consolidation, *or exchange,* the merger, consolidation, *or exchange* may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

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(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to particpate without limitation in distribution of earnings or surplus."

Section 42. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, consolidation, or exchange — contents — filing. (1) Upon *receiving the approvals required by 35-1-801 and 35-1-803*, articles of merger, articles of consolidation, *or exchange* shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger, consolidation, *or exchange*;

(b) as to each corporation, *either:*

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; *or*

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation *the approval of whose shareholders is required*, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, consolidation, *or exchange* shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as *prescribed* in this chapter:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, consolidation, *or exchange* to which he shall affix the other duplicate original.

(3) The certificate of merger, consolidation, *or exchange,* together with the duplicate original of the articles of merger or articles of consolidation

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affixed thereto by the secretary of state, shall be returned to the surviving, new, *or acquiring* corporation, as the case may be, or its representative."

Section 43. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or *of any other corporation or, in whole or in part, into cash or other property.*

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 44. Section 35-1-806, MCA, is amended to read:

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"35-1-806. Effect of merger, consolidation, or exchange. (1) *A merger, consolidation, or exchange becomes effective upon* the issuance of *a* certificate of merger, consolidation, *or exchange* by the secretary of state *or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.*

(2) When *a* merger or consolidation has *become effective*:

(a) *the* several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) *the* separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) *the* surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) *the* surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) *the* surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) *in* the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the case of a merger or consolidation, or be considered to be

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exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810."

Section 45. Section 35-1-807, MCA, is amended to read:

"**35-1-807. Merger, consolidation, or exchange of shares between domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged, consolidated, *or participate in an exchange* in the following manner if such merger, consolidation, *or exchange* is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation, *or exchange*, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation *in a merger or consolidation* is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders."

Section 46. Section 35-1-808, MCA, is amended to read:

"**35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets.** The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, *obligations, or other securities* of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required."

Section 47. Section 35-1-809, MCA, is amended to read:

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"35-1-809. Sale of assets not in regular course of business — shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, *obligations, or other securities* of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders."

Section 48. Section 35-1-810, MCA, is amended to read:

"35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from, *and to obtain payment for his shares in the event of,* any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, *except as provided in subsection (3)*;

(b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

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(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(e) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) *(a)* A *record holder of shares may assert dissenters' rights* as to less than all of the shares registered in his name *only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents.* In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and [section 49] if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The *right to obtain payment under* this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation."

Section 49. **Procedures for protection of dissenters' rights.** (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

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(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of

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a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the

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person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

Section 50. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators *or initial board of directors* and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

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(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, *the board of directors,* or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 51. Section 35-1-1002, MCA, is amended to read:

"35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature."

Section 52. Section 35-1-1006, MCA, is amended to read:

"35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation

shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;

(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, *except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:*

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of Title 30, chapter 13, part 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state."

Section 53. Section 35-1-1007, MCA, is amended to read:

"35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state *or has otherwise complied with the provisions of 35-1-1006."*

Section 54. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one

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of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; *and*

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be *made on forms prescribed and furnished by the secretary of state and shall be* executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 55. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application — issuance of certificate of authority. (1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly *authenticated* by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

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(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 56. Section 35-1-1015, MCA, is amended to read:

"35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment, duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state *nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.*"

Section 57. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be

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attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; *and*

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made *on forms* prescribed *and furnished* by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him."

Section 58. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by *class* and series, if any, within *each* class; *and*

(f) a statement of the aggregate number of issued shares, itemized by *class* and series, if any, within *each* class.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for

a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be *on forms* prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer and verified by the officer executing the report, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation and verified by such receiver or trustee."

Section 59. Section 35-1-1202, MCA, is amended to read:

"35-1-1202. Secretary of state to establish fees commensurate with costs. *The secretary of state shall establish fees for filing documents and issuing certificates as required by this chapter. The fees must be reasonably related to the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees established under this section.*"

Section 60. Section 35-1-1205, MCA, is amended to read:

"35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares in an amount equal to the *number of authorized shares* of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a

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notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of ½ of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees."

Section 61. **Codification instruction.** Sections 4, 5, 23, 29, 38, 39, and 49 are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to sections 4, 5, 23, 29, 38, 39, and 49.

Section 62. **Repealer.** Sections 35-1-608, 35-1-613 through 35-1-616, 35-1-701 through 35-1-705, 35-1-802, and 35-1-811, MCA, are repealed.

Approved April 21, 1981.

CHAPTER NO. 476

AN ACT TO VALIDATE CERTAIN CONVEYANCES OF REAL PROPERTY CONTAINING TECHNICAL DEFECTS IN EXECUTION; AMENDING SECTION 70-21-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-21-309, MCA, is amended to read:

"70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending *as of [the effective date of this act]* to set such instrument aside, which was, previous to January 1, *1981*, *recorded* in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any *technical* defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to *January 1, 1981.*

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded."

Approved April 21, 1981.

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CHAPTER NO. 477

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE INTEREST UPON DELINQUENT TAXES AND PENALTIES IN CERTAIN CASES AND TO EXTEND THE PERIOD BEFORE A PENALTY MAY BE ASSESSED; AMENDING SECTIONS 15-1-206, 15-30-142, AND 15-30-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver and abatement of penalties — interest. *(1)* The department may, in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(2) Whenever the department waives or abates a penalty provided for in this title, it also may, in its discretion, waive or abate interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income as the result of a federal adjustment or upon filing an amended federal return, as provided for in 15-30-304, the department shall abate the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer.

(4) The department may waive or abate interest accrued prior to July 1, 1981, on additional individual income tax liability for tax years beginning after December 31, 1978, and on or before December 31, 1979, due to the refund of Alaska personal income tax during the period January 1, 1980, through December 31, 1980."

Section 2. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $940 and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $1,880 shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800 for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for

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himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within *60* days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within *60* days after the first notice of the amount is mailed to the taxpayer."

Section 3. Section 15-30-323, MCA, is amended to read:

"15-30-323. Penalty for deficiency. (1) If the payment required by 15-30-142(6) is not made within *60* days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there shall be added to the amount of the deficiency 5% thereof; provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subsection, the interest shall in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest thereon at the rate of 9% per annum from the time

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when the return was originally required to be filed to the time of payment."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

CHAPTER NO. 478

AN ACT AMENDING SECTIONS 15-6-141, 15-6-201, AND 15-23-101, MCA, TO PROVIDE FOR TAXATION AS CLASS ELEVEN PROPERTY OF CERTAIN ELECTRIC TRANSMISSION AND DISTRIBUTION PROPERTY CONSTRUCTED, OWNED, OR OPERATED BY A PUBLIC AGENCY, TO ELIMINATE TAX EXEMPTION OF SUCH PROPERTY, TO INCLUDE SUCH PROPERTY AMONG PROPERTIES CENTRALLY ASSESSED; AND PROVIDING AN EFFECTIVE DATE CONTINGENT ON CONGRESSIONAL ACTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, *except property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)*;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

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(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class eleven property — description — taxable percentage. (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations, *including allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)*;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

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(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Property described in subsection (1)(c) is taxed at 15% of market value."

Section 3. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines, natural gas or oil pipelines, canals, ditches, flumes, or like properties *and including property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)*;

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells; and

(5) the gross proceeds of coal mines."

Section 4. **Effective date — contingent on congressional action.** This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electric energy.

Approved April 21, 1981.

CHAPTER NO. 479

AN ACT TO REALLOCATE THE COAL SEVERANCE TAX BY REDUCING THE AMOUNT ALLOCATED TO ALTERNATIVE ENERGY RESEARCH FROM 5 PERCENT TO 4 ½ PERCENT AND ALLOCATING ½ of 1 PERCENT OF THE TAX TO CONSERVATION DISTRICT OPERATIONS; AMENDING SECTION 15-35-108, MCA.

WHEREAS, Montana's Conservation Districts are legal subdivisions of state government responsible under law to develop and carry out long-range programs that will result in the conservation and improvement of

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the soil and water resources, to provide assistance in the planning and application of conservation measures, and to encourage maximum participation of the general public and all local public and private agencies to fulfill this purpose; and

WHEREAS, Montana's Conservation Districts represent about 14,500 cooperators totaling 43,550,000 acres of farmland and ranchland within their boundaries; and

WHEREAS, districts in urban and developing areas provide soil surveys, water inventories, assistance with waste disposal, and other services to builders, contractors, planning commissions, municipal officials, schools, hospitals, industries, and smaller landowners; and

WHEREAS, two concepts gaining support and understanding are the desirability of decentralized government and the limits of natural resources. In combination, these ideas and the demands on their services have resulted in tremendously magnified responsibilities for conservation districts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter *4 ½%* to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

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(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 2 ½% to the sinking fund to the credit of the renewable resource development bond account;

(h) 5% to the earmarked revenue fund to the credit of a trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the earmarked revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the earmarked revenue fund for conservation districts;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Conservation district account — administration.** (1) There is a conservation district account in the earmarked revenue fund of the state treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department of natural resources and conservation.

(2) The department of natural resources and conservation shall administer the conservation district account. The money shall be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department of natural resources and conservation for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department of natural resources and conservation may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

Approved April 21, 1981.

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CHAPTER NO. 480

AN ACT TO PROVIDE A CREDIT AGAINST INDIVIDUAL INCOME TAX LIABILITY UNDER TITLE 15, CHAPTER 30, MCA, FOR CAPITAL EXPENDITURES FOR ENERGY-CONSERVING PURPOSES; ELIMINATING THE DEDUCTION FROM INDIVIDUAL INCOME TAX LIABILITY FOR SUCH EXPENDITURES; PROVIDING AN APPLICABILITY DATE; AND AMENDING SECTIONS 15-30-121, 15-30-131, AND 15-32-103 THROUGH 15-32-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Credit for energy-conserving expenditures.** (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take as a credit against the taxpayer's tax liability under chapter 30 a portion of his expenditure for a capital investment in a building for an energy conservation purpose, determined as follows:

(a) in the case of an expenditure for a residential building, the lesser of:

(i) $150; or

(ii) 5% of the expenditure; and

(b) in the case of an expenditure for a building not used as a residence, the lesser of:

(i) $300; or

(ii) 5% of the expenditure.

(2) The credit or the sum of the credits under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

(3) There is no carryback or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method.

Section 2. **Credit for energy-conserving investments.** There is a credit against tax liability under this chapter as provided in [section 1].

Section 3. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974. However, the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse.

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978."

Section 4. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income — deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions *and the credit under [section 1]* allowed a resident to the extent that such deductions *or credit* were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended."

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Section 5. Section 15-32-103, MCA, is amended to read:

"15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

(2) This tax treatment is subject to approval of the department of an application as provided in 15-32-106 and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation."

Section 6. Section 15-32-104, MCA, is amended to read:

"15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 *and [section 1]* is limited to:

(1) capital investments made after January 1, 1975;

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and

(3) a ceiling of $100,000 in tax savings per year to any one person or firm."

Section 7. Section 15-32-105, MCA, is amended to read:

"15-32-105. Application to new construction — rules. (1) It is the intent of the legislature that no deduction *or credit* under this part be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.

(2) The department may adopt rules to define standard components of conventional buildings and to establish other necessary elements of the definition of passive solar system consistent with the intent of 15-32-102."

Section 8. Section 15-32-106, MCA, is amended to read:

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"15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for tax treatment under 15-32-103 *or [section 1].* Application shall be made to the department of revenue. The department of revenue shall approve an application which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department of revenue may refer an application involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within 60 days. The department of revenue may refer an application involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny an application which it finds to be impractical or ineffective."

Section 9. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 15, chapter 32, part 1, and the provisions of Title 15, chapter 32, part 1, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, apply to section 2.

Section 10. **Applicability.** This act applies to tax years beginning after December 31, 1980.

Approved April 21, 1981.

CHAPTER NO. 481

AN ACT TO ENACT THE PROVISIONS OF THE MODEL DRUG PARAPHERNALIA ACT; PROVIDING FOR A DEFINITION OF DRUG PARAPHERNALIA; PROVIDING PENALTIES FOR ITS SALE, POSSESSION, OR ADVERTISEMENT; AND PROVIDING FOR FORFEITURE; AMENDING SECTIONS 44-12-102 AND 44-12-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** (1) As used in [sections 1 through 7], the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

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(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

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(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in [sections 1 through 7] that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

Section 2. **Determination of what constitutes paraphernalia.** In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of [sections 1 through 7];

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of [sections 3 through 6]. The innocence of an owner or of anyone in control of the object as to a direct violation of [sections 3 through 6] does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

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(14) expert testimony concerning its use.

Section 3. **Criminal possession of drug paraphernalia.** It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

Section 4. **Manufacture or delivery of drug paraphernalia.** It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

Section 5. **Delivery of drug paraphernalia to a minor.** Any person 18 years of age or over who violates [section 4] by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

Section 6. **Advertisement of drug paraphernalia.** It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

Section 7. **Exemptions.** Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from [sections 1 through 7].

Section 8. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended

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for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9; *and*

(f) all drug paraphernalia as defined in [section 1].

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

Section 9. Section 44-12-103, MCA, is amended to read:

"44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

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(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, *or in violation of [sections 1 through 7].*"

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 1981.

CHAPTER NO. 482

AN ACT PROVIDING FOR GRANTS OF FRONT-END IMPLEMENTATION FUNDS FOR SOLID WASTE MANAGEMENT CAPITAL EQUIPMENT; AMENDING SECTIONS 75-10-103, 75-10-105, AND 75-10-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

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(4) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(5) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(6) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(8) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood wastes and inert materials; but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands.

(10) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(11) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 2. Section 75-10-105, MCA, is amended to read:

"75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system*; and*

(3) make grants for a local government for planning or implementation of a solid waste management system."

Section 3. Section 75-10-106, MCA, is amended to read:

"75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

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(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the *following:*

(a) submission of plans for a solid waste management system;

(b) the procedures to be followed in applying for and making loans *and grants;*

(c) the requirements for eligibility for grants; and

(d) the agreements between the local government and the department for grants and loans under this part."

Section 4. **Solid waste management implementation grants.** (1) The department, in the name of the state of Montana, may enter into an agreement with a local government for a grant of front-end implementation funds to a local government.

(2) The terms of the agreement, in addition to those prescribed by rules of the board, must include the following:

(a) the amount of the grant, not to exceed 50% of the reasonable purchase price of the capital equipment to be used by the local government in its solid waste management system;

(b) an agreement by the local government:

(i) to operate and maintain a solid waste management system in accordance with plans approved by the department, with applicable provisions of part 2 of this chapter and with rules of the department; and

(ii) not to discontinue operations or terminate a solid waste management system without the approval of the department;

(c) an agreement by the local government that if it trades or sells the capital equipment purchased with grant funds within 5 years of the date of execution of the grant agreement, the local government shall pay to the department an amount equal to the fair market value of the capital equipment on the date of the trade or sale;

(d) certification by the local government that any front-end implementation funds received pursuant to this section will be used solely for the purpose stated in the grant agreement; and

(e) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including, within 60 days of the date of termination of the grant agreement, an audit by a certified public accountant of the financial records and transactions. A copy of this audit must be submitted to the department of administration and the department within 30 days of its completion.

(3) In granting front-end implementation funds to local governments, the department may consider only local government applications that include a solid waste management system plan that conforms to the state solid waste management plan and that specify the method by which the solid waste management system will be financed.

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(4) No local government may receive a grant of front-end implementation funds under this section unless its solid waste management system plan has been approved by the department and the method of financing the approved solid waste management system has been implemented.

Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 75, chapter 10, part 1, and the provisions of Title 75, chapter 10, part 1, apply to section 4.

Section 6. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 1981.

CHAPTER NO. 483

AN ACT TO PROVIDE THAT A PORTION OF THE GAIN UPON A CORPORATE LIQUIDATION IS RECOGNIZED FOR STATE TAX PURPOSES BY THE LIQUIDATING CORPORATION IF ANY STOCKHOLDER OF THE CORPORATION IS NOT SUBJECT TO MONTANA INCOME TAX OR CORPORATE LICENSE TAX UNDER TITLE 15, CHAPTER 30 OR 31, AS APPROPRIATE; AMENDING SECTIONS 15-30-111 AND 15-31-113, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

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(b) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(c) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(d) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(e) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(f) all Montana income tax refunds or credits thereof;

(g) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(h) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(i) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii).

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

Section 2. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes *and:*

(a) including:

(i) interest exempt from federal income tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

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(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) No corporation is exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 3. **Applicability.** This act applies to tax years beginning after December 31, 1980.

Approved April 21, 1981.

CHAPTER NO. 484

AN ACT TO REVISE THE YOUTH COURT ACT; CHANGING THE CRITERIA FOR TRANSFER TO DISTRICT COURT; CHANGING THE PROVISIONS FOR RETAINING FINGERPRINT AND PHOTOGRAPHIC RECORDS; PROHIBITING CONSIDERATION OF INSURANCE COMPENSATION TO A VICTIM; PROVIDING FOR APPOINTED COUNSEL WHEN THE YOUTH AND HIS PARENTS ARE UNABLE TO RETAIN COUNSEL; AMENDING SECTIONS 41-5-206, 41-5-304, 41-5-403, 41-5-511, AND 41-5-522, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) sexual intercourse without consent as defined in 45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

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(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as included in 45-9-101;

(x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court *may* also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. *However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.*

(c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

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(6) Any offense not enumerated in subsection (1)(a) that arises during the commission of a crime enumerated in subsection (1)(a) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1)(a), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper."

Section 2. Section 41-5-304, MCA, is amended to read:

"41-5-304. Fingerprints and photographs. (1) Title 46 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) no youth may be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, the Montana department of justice, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(2) *Fingerprint* records and photographs *shall* be retained by the originating agency *only until the youth reaches the age of majority unless the judge orders the records destroyed at an earlier date. Any such record may be used by the originating agency for comparison and identification purposes in any other investigation only when probable cause is established before the youth court judge that the youth is a principal suspect.*"

Section 3. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

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(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, *however the ability of the victim or his insurer to stand any loss may not be considered in any case.*"

Section 4. Section 41-5-511, MCA, is amended to read:

"**41-5-511. Right to counsel.** In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth *if the parents and the youth are unable to provide counsel* unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication."

Section 5. Section 41-5-522, MCA, is amended to read:

"**41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-5-805 and 41-5-806.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

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(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, *however the ability of the victim or his insurer to stand any loss may not be considered in any case.*"

Approved April 21, 1981.

CHAPTER NO. 485

AN ACT TO DEFINE AND PROHIBIT COMPUTER-RELATED CRIME; PROVIDING PENALTIES; PERMITTING THE STATUTE OF LIMITATIONS TO TOLL UNTIL THE OFFENSE IS DISCOVERED; AMENDING SECTIONS 45-1-205, 45-2-101, 45-2-103, 45-2-104, 50-20-109, AND 61-5-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

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(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

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(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

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(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

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(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such

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interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means *any tangible or intangible thing* of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which

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constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; *and*

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

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(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or

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intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection *(69)*(a) above, its value shall be considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. **Definition.** As used in [section 3], the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network, or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

Section 3. **Unlawful use of a computer.** (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof, or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $150 in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed,

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or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 5. Section 45-2-103, MCA, is amended to read:

"45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections *(33)*, *(37)*, and *(58)* of 45-2-101. The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among

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the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense."

Section 6. Section 45-2-104, MCA, is amended to read:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections *(33)*, *(37)*, and *(58)* of 45-2-101 only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 7. Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

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(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101*(37)*. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor."

Section 8. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101*(21)*, and 61-7-103, respectively.

(2) In addition to convictions mentioned above the division, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301)."

Section 9. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to sections 2 and 3.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

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CHAPTER NO. 486

AN ACT TO REVISE THE LAW PERTAINING TO RAILROAD BONDS; TO PROVIDE THE NECESSARY BACKING FOR RAILROAD REHABILITATION REVENUE BONDS AND RAILROAD ROLLING STOCK REVENUE BONDS; ELIMINATING LIMIT ON INTEREST RATES ON THE BONDS; INCLUDING CARRIERS USED TO TRANSPORT PRODUCTS OTHER THAN GRAIN IN THE DEFINITION OF ROLLING STOCK; AND AMENDING SECTIONS 60-11-1102, 60-11-1104 THROUGH 60-11-1107, 60-11-1112, 60-11-1202, 60-11-1204 THROUGH 60-11-1207, 60-11-1211, AND 60-11-1212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-11-1102, MCA, is amended to read:

"60-11-1102. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rehabilitation revenue bonds authorized by 60-11-1103.

(2) "Department" means the department of highways.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rehabilitation project" means a business undertaking to repair, *improve,* or replace rail facilities to improve the safety and efficiency of the facilities and to derive revenue.

(5) "Rail facilities" means the line of track of a railroad, including spurs and extensions, and associated facilities, including but not limited to *freight and commodities, storage and loading facilities,* signal and switching systems, roadbeds, and machinery and equipment designed for rail maintenance, but the term does not include engines or rolling stock used for the transport of goods or passengers.

(6) "Refunding bonds" means railroad rehabilitation refunding revenue bonds authorized by 60-11-1109."

Section 2. Section 60-11-1104, MCA, is amended to read:

"60-11-1104. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices *above or below par as* determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

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(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants."

Section 3. Section 60-11-1105, MCA, is amended to read:

"60-11-1105. Bond limitations. (1) The interest rate *or rates* on the bonds *shall be determined by the department.* The total amount of bonds outstanding at any one time may not exceed $25 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond."

Section 4. Section 60-11-1106, MCA, is amended to read:

"60-11-1106. Bond covenants. The department may enter into covenants with the bondholders *by resolution, trust indenture, or other appropriate security instrument* to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds."

Section 5. Section 60-11-1107, MCA, is amended to read:

"60-11-1107. Bond accounts — appropriation. (1) There is a railroad rehabilitation account in the bond proceeds and insurance clearance fund provided for in 17-2-1101. All bond proceeds shall be placed in

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the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rehabilitation reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1106, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2)."

Section 6. Section 60-11-1112, MCA, is amended to read:

"**60-11-1112. Loan details.** The terms of any loan made pursuant to 60-11-1111 shall be specified by the department and shall be such as to assure sufficient payments to meet the obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with *the project or other property of the borrower.*"

Section 7. Section 60-11-1202, MCA, is amended to read:

"**60-11-1202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rolling stock revenue bonds authorized by 60-11-1203.

(2) "Department" means the department of highways.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rolling stock project" means a business undertaking to manufacture, *repair,* purchase, or lease rolling stock and to subsequently use, sell, or lease the rolling stock to derive revenue.

(5) "Railroad rolling stock" or "rolling stock" means railroad cargo carriers used to transport grain, *coal, ore, lumber, freight, and commodities.*

(6) "Refunding bonds" means railroad rolling stock refunding revenue bonds authorized by 60-11-1209."

Section 8. Section 60-11-1204, MCA, is amended to read:

"**60-11-1204. Bond details.** (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices *above or below par as* determined by the department.

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(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants."

Section 9. Section 60-11-1205, MCA, is amended to read:

"60-11-1205. Bond limitations. (1) The interest rate *or rates* on the bonds *shall be determined by the department.* The total amount of bonds outstanding at any one time may not exceed $75 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond."

Section 10. Section 60-11-1206, MCA, is amended to read:

"60-11-1206. Bond covenants. The department may enter into covenants with the bondholders *by resolution, trust indenture, or other appropriate instrument* to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds."

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Section 11. Section 60-11-1207, MCA, is amended to read:

"60-11-1207. Bond accounts — appropriation. (1) There is a railroad rolling stock account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rolling stock reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1206, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2)."

Section 12. Section 60-11-1211, MCA, is amended to read:

"60-11-1211. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons doing business or resident in Montana for financing rolling stock projects when the rolling stock is to be *based in Montana and* used primarily for the transport of grain, *coal, ore, lumber, freight, and commodities* produced in Montana.

(2) The revenue from the sale or use of the rolling stock shall be used for repayment of the loans."

Section 13. Section 60-11-1212, MCA, is amended to read:

"60-11-1212. Loan details. The terms of any loan made pursuant to 60-11-1211 shall be specified by the department and shall be such as to assure sufficient payments to enable the department to meet its obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the *project* or other property *of the borrower.*"

Section 14. **Limitation.** Nothing contained in this act or in Title 60, chapter 11, shall permit or authorize the purchase or acquisition in any manner of railroad track, roadbeds, associated facilities, railroad equipment, or railroad rolling stock by the state of Montana. Nothing contained in this act or in Title 60, chapter 11, shall authorize the state of Montana to do any more or any less than a municipality or county is authorized to do in connection with the issuance of industrial development revenue bonds under Title 90, chapter 5, part 1, MCA.

Section 15. **Coordination instruction.** If the 47th legislature passes a bill creating a department of commerce and that bill is approved, then the definition of "department" contained in 60-11-1102(2) and

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60-11-1202(2) shall be changed to read "means the department of commerce".

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 1981.

CHAPTER NO. 487

AN ACT TO EXEMPT CITIES AND COUNTIES FROM CONTRIBUTING TO THE TRAFFIC EDUCATION ACCOUNT; TO INCREASE THE AMOUNT CONTRIBUTED FROM OTHER EARMARKED SOURCES; AMENDING SECTIONS 20-7-504 AND 20-7-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-504, MCA, is amended to read:

"20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines and *forfeitures collected in any court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any* violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, *25%* of the fine imposed;

(b) if multiple offenses are involved, *25%* of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, *25%* of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, *25%* of the forfeited bail.

(2) *Thirty-five* percent of all money received by the state from the collection of the motor vehicle driver's license fee provided for under the laws of Montana shall be contributed to the traffic education account."

Section 2. Section 20-7-505, MCA, is amended to read:

"20-7-505. Transmittal of proceeds from fines and other sources. (1) The portion of the proceeds from fines and bail forfeitures which are to be deposited in the traffic education account shall be transmitted to the county treasurer by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to *the county treasurer* under law. The court shall indicate what portion of each

fine is to be credited to the traffic education account. The county *treasurer* shall transmit monthly to the state treasurer, without deduction, the portions of the fines received which are to be credited to the traffic education account.

(2) When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account."

Approved April 21, 1981.

CHAPTER NO. 488

AN ACT TO REVISE AND CLARIFY THE LAWS RELATING TO BALLOT ISSUES; REQUIRING THE LEGISLATIVE COUNCIL TO REVIEW ALL BALLOT ISSUES; TO SIMPLIFY THE LANGUAGE IN BALLOT ISSUE PETITIONS; TO REQUIRE THAT EACH PETITION CONTAIN THE ADDRESS OF THE PERSON CIRCULATING IT; AND ENCOURAGING THE ATTORNEY GENERAL TO APPOINT A COMMITTEE TO WRITE THE PURPOSE OF THE BALLOT ISSUE AND THE STATEMENTS OF IMPLICATION; AMENDING SECTIONS 13-27-202, 13-27-204 THROUGH 13-27-207, 13-27-302, AND 13-27-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-202, MCA, is amended to read:

"13-27-202. Approval of form required. (1) Before a petition may be circulated for signatures, a sample sheet *containing the text of the proposed measure* must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to:

(a) the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.

(b) the legislative council. The legislative council shall review the text of the proposed measure for clarity, consistency, or any other factors the council considers when drafting legislation. The legislative council must make its recommendations within 14 days after the petition is submitted to the secretary of state. The person submitting the petition may accept, reject, or modify the changes recommended by the legislative council. A copy of the recommended changes shall be made available to any person by the secretary of state upon request.

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(2) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval within 28 days after submission of the petition sheet. The secretary of state shall send written notice if the petition has been rejected together with reasons for rejection within 14 days after submission of the petition sheet."

Section 2. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

PETITION TO PLACE
INITIATIVE NO._____ ON
THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 19..., general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/*her* own to this petition or who signs more than once for the same issue at one election or signs *when not a legally registered* Montana *voter* is *subject to* a $500 *fine, 6 months in* jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 3. Section 13-27-205, MCA, is amended to read:

"13-27-205. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

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PETITION TO PLACE REFERENDUM NO._____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ..... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/*her* own to this petition or who signs more than once for the same issue at one election or signs *when not a legally registered* Montana *voter* is *subject to a* $500 *fine,* 6 months *in jail,* or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 4. Section 13-27-206, MCA, is amended to read:

"13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

PETITION TO PLACE
INITIATIVE NO._____, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention the legislature will call for a constitutional convention at its next session.

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(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 19..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than his/*her* own to this petition or who signs more than once for the same issue at one election or signs *when not a legally registered Montana voter is subject to a* $500 *fine* or 6 months *in jail*, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 5. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO._____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ...., 19..., general election ballot.

(Title of the proposed contitutional amendment written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

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(d)

WARNING

A person who purposefully signs a name other than his/*her* own to this petition or who signs more than once for the same issue at one election or signs *when not a legally registered* Montana *voter is subject to a* $500 *fine,* 6 months *in jail,* or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 6. Section 13-27-302, MCA, is amended to read:

"13-27-302. Certification of signatures. An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

I, (Name of person *who circulated this* petition), *affirm,* or being first sworn, *depose* and *say*: that I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, *are the signatures of Montana electors who are registered at the address following their signature,* and that the signers knew the contents of the petition before signing the same.

.....
(Signature *of petition circulator*)

.....
(Address of petition circulator)

Subscribed and sworn to before me this .... day of ....., 19...

.....
(Person authorized to take oaths)

Seal

.....
(Title or notarial information)"

Section 7. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general — preparation of statements. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form. If the petition form is approved, the attorney general shall *endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing*

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the petition, two persons known to oppose the measure, and one representative of the attorney general's office who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

(3) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(4) The statement *of purpose* prepared pursuant to *subsection (1) or (2)*, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(5) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(6) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose and the statements of implication to the secretary of state within 21 days after receipt of the petition by the attorney general."

Approved April 21, 1981.

CHAPTER NO. 489

AN ACT TO REVISE THE LICENSING LAWS FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS; INCREASING REGISTRATION FEES; CLARIFYING REQUIREMENTS FOR REGISTRATION AS A LAND SURVEYOR; AND AMENDING SECTIONS 37-67-303, 37-67-308, AND 37-67-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by

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the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is as prescribed by the board but may not exceed *$45*, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board but may not exceed *$60* for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board but may not exceed *$75*, which includes cost of *verification* of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on *approval of the* application, payment of a fee as prescribed by the board but not to exceed *$90, and payment of an additional fee equal to the appropriate renewal fee*, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board but may not exceed *$45*, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is as prescribed by the board but may not exceed *$60* for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board but may not exceed *$75*, which includes cost of *verification* of the certification. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is as prescribed by the board but may not exceed *$120* for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board but may not exceed *$150*. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

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(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 2. Section 37-67-308, MCA, is amended to read:

"37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a land surveyor, three of which references shall be registered land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board. *Minimal educational requirements must include 40 quarter credit hours in surveying techniques and principles and practices of surveying curricula prescribed by the board.*"

Section 3. Section 37-67-315, MCA, is amended to read:

"37-67-315. Annual renewal — fee — verification of competency. (1) Certificates of registration expire on December 31 of the appropriate year and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December of the appropriate year by the payment of a fee, not to exceed $60 biennially, as set by the board for either a professional engineer or land surveyor. *For renewal of a dual license as both a professional engineer and land surveyor, the fee shall be set by the board, not to exceed $90.*

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially in the month of December of the appropriate year does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional *year of the biennium* shall be considered a new applicant and is required to submit a new application.

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(4) The fee for any registrant who fails to renew his certificate by December 31 of the appropriate year shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid."

Section 4. **Coordination instruction.** If [Senate] Bill No. [412] [LC 1288], including the section of that bill relating to professional engineers and land surveyors, is passed and approved, the specific dollar amounts of fee changes in sections 1 and 3 will not become effective. The fees will be established as provided in [Senate] Bill No. [412] [LC 1288]. The remaining parts of this act will be unaffected by [Senate] Bill No. [412] [LC 1288].

Approved April 21, 1981.

CHAPTER NO. 490

AN ACT TO REQUIRE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO LIMIT THE NUMBER OF NEW OUTFITTER AND GUIDE LICENSES ISSUED FOR FISHING PURPOSES BY PROVIDING FOR ESTABLISHMENT OF A 2-YEAR MORATORIUM BEGINNING ON APRIL 1, 1981; AMENDING SECTION 87-4-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-104, MCA, is amended to read:

"87-4-104. Powers and duties of department relating to outfitters and guides. The department shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account.

(2) cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) establish a minimum of two meetings annually with the advisory council;

(4) consult with the advisory council to develop policy concerning the administration of outfitting;

(5) designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations;

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(6) when the commission determines it necessary to protect the fishing resource, public health, public safety, or public welfare, establish and regulate a moratorium on either or both the Madison River or Big Hole River, the issuance of outfitter licenses for the purpose of float fishing as defined in 87-4-101(4)(c) except that those fishing outfitters licensed in 1980 may receive renewal licenses, if qualified. The total number of professional guide licenses endorsed by fishing outfitters under a moratorium may not be less than the total number issued in 1980."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

CHAPTER NO. 491

AN ACT TO AUTHORIZE THE DEPARTMENT OF LIVESTOCK TO CONDUCT RESEARCH PROGRAMS WITH REGARD TO ALL PHASES OF BEEF PRODUCTION AND TO PROMOTE THE USE AND CONSUMPTION OF BEEF AND BEEF PRODUCTS; PROVIDING FOR A TAX ON CATTLE TO FUND THE DEPARTMENT'S ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Montana Beef Research and Marketing Act".

Section 2. **Definition.** As used in [sections 1 through 5], "department" means the department of livestock.

Section 3. **Department's research powers and duties.** (1) The department shall:

(a) promote scientific and practical research with regard to all phases of beef production;

(b) encourage the use and consumption of beef and beef products; and

(c) be responsible for administering [sections 1 through 5].

(2) The department may:

(a) engage in research, education, advertising, promotion, and publicity;

(b) research and publicize statistics and other reliable and useful information showing the commercial value of beef and beef products;

(c) study state and federal legislation regarding tariffs, duties, reciprocal trade agreements, import quotas, and other matters affecting marketing in the beef industry and protect the interests of and represent the beef industry in Montana with respect to any federal or state legislation or proposed legislation and any federal or state executive action that may affect that industry;

(d) apply for grants:

(i) from research agencies that are financing special or emergency studies; or

(ii) for the purchase or acquisition of facilities necessary for the implementation of [sections 1 through 5];

(e) enter into agreements with recognized local, state, or national organizations, public or private, to promote research, education, advertising, and publicity of the beef industry;

(f) cooperate with any local, state, or national organizations, including recognized livestock groups, engaged in work or activities similar to the work and activities of the department provided for in [sections 1 through 5];

(g) accept any grant, donation, or gift from any source, public or private, and spend it in compliance with [this act]; and

(h) adopt rules necessary for the administration of [this act].

Section 4. **Assessments — refunds.** (1) There is levied, in addition to the tax on livestock prescribed in Title 15, chapter 24, part 9, a per head tax of 25 cents on each head of cattle that is more than 9 months of age and is owned or possessed within a county for the support and maintenance of research into beef production as provided in [sections 1 through 5]. The tax shall be paid to the county treasurer of that county on or before March 1 of each year.

(2) The tax required in subsection (1) must be paid for each head of cattle that is more than 9 months of age and is brought into the county after March 1 and is subject to taxation and assessment under 15-24-301.

(3) Each county is entitled to receive $250 annually as reimbursement for the administration of this section.

(4) A person who has paid the tax required by this section may obtain a refund of the tax upon submission of a written request to the department. The application must be made within 30 days after the payment of the tax and on forms furnished by the department. The department shall, upon receipt of a timely and otherwise properly submitted refund request, refund the tax.

Section 5. **Beef production research account — sources — use — expenditures.** (1) There is an account in the federal and private revenue fund known as the beef production research account. The following shall be placed in the account:

(a) the proceeds of all taxes collected under [section 4]; and

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(b) the proceeds from all gifts, grants, and donations to the department for activities authorized under [sections 1 through 5].

(2) The account shall be maintained for the purposes of [sections 1 through 5] and shall be separate from all other accounts of the department.

(3) At least 20% of all contributions and unrefunded taxes received by the department shall be paid to the national livestock and meat board and at least 20% of such contributions and taxes shall be paid to the national beef industry council to carry out, on a national level, work and programs approved by the department.

(4) The beef production research account may be assessed costs by the department for services it provides in administering [sections 1 through 5]. The costs charged must have a substantial relationship to the cost of the services provided.

(5) Money deposited in the beef production research account pursuant to [section 5] is appropriated to the department and must be used only for the purposes of [sections 1 through 5].

Section 6. **Duration — expiration — reversion of remaining funds.** [Sections 1 through 5] shall be in effect from January 1, 1982, to July 1, 1989. If [sections 1 through 5] are not renewed to extend beyond July 1, 1989, any money remaining in the beef production research account shall revert to Montana state university to be used exclusively for beef cattle research.

Approved April 21, 1981.

CHAPTER NO. 492

AN ACT TO REQUIRE ITEMIZED CITY ASSESSMENTS TO BE INCLUDED ON PROPERTY TAX NOTICES SENT TO TAXPAYERS; AMENDING SECTION 15-16-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of ⅔ of 1% per month from and after such delinquency and 2% will be added to the amount thereof as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid

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prior to said date said taxes will be delinquent and will draw interest at the rate of ⅔ of 1% per month from and after such delinquency and 2% will be added to the amount thereof as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes *and assessments* due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published for 2 weeks in some weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax."

Approved April 21, 1981.

CHAPTER NO. 493

AN ACT TO CLARIFY PROVISIONS RELATING TO THE BATTERED SPOUSES AND DOMESTIC VIOLENCE GRANT PROGRAM; RAISING THE MARRIAGE LICENSE FEE FROM $25 TO $30; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 25-1-201, 40-1-202, 40-2-404, AND 40-2-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

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(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $20; and for filing a complaint in intervention, from the intervenor, $20;

(b) from each defendant or respondent, on his appearance, $10;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, *$30*;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) *Except as provided in subsection (3), 40%* of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404."

Section 2. Section 40-1-202, MCA, is amended to read:

"**40-1-202. License issuance.** When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of *$30*, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have

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attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state."

Section 3. Section 40-2-404, MCA, is amended to read:

"40-2-404. Authorized services of programs. *(1)* Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of social and rehabilitation services according to regional boundaries established by the department."

Section 4. Section 40-2-405, MCA, is amended to read:

"40-2-405. Funding. (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. *The disposition of the marriage license fee is as established in 25-1-201.*

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Section 5. **Appropriation.** (1) There is appropriated from the general fund to the department of social and rehabilitation services for the battered spouses and domestic violence grant program the following amounts:

For the fiscal year ending June 30, 1982	$40,500
For the fiscal year ending June 30, 1983	$40,500

(2) The appropriation provided for in subsection (1) may be used only for regional shelter or safe house programs for victims as provided for in 40-2-404.

Approved April 21, 1981.

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CHAPTER NO. 494

AN ACT TO REVISE THE LAWS RELATING TO DISTRIBUTION OF THE DECISIONS OF THE MONTANA SUPREME COURT; PROVIDING FOR SALE OF SUCH CASE REPORTS AT COST TO CERTAIN AGENCIES IN LIEU OF FREE DISTRIBUTION; AMENDING SECTIONS 2-15-401, 3-2-603, AND 3-2-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor as prescribed in 2-7-102;

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(12) register marks as provided in Title 30, chapter 13, part 3;

(13) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;

(14) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(15) keep a register of all application for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 2. Section 3-2-603, MCA, is amended to read:

"3-2-603. Duties of reporters. (1) The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of and pursuant to rules adopted by the justices of the supreme court.

(2) Reports of all cases shall be furnished to the West Publishing Company for inclusion in its publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication.

(3) The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices. The department of administration shall prepare and issue a call for bids and, in accordance with the terms and specifications of the call, contract with the lowest and best bidder. *The contract shall provide that the copies of the reports purchased by state or local governmental agencies of Montana, including the reports purchased by the supreme court pursuant to 3-2-604, shall be sold to them by the publisher at the cost of publication.*"

Section 3. Section 3-2-604, MCA, is amended to read:

"3-2-604. Distribution of reports. (1) On the publication of each volume of the reports, the *supreme court* shall purchase *up to 221* copies from the publisher. *The court* shall distribute them *at no charge and* in the following manner:

(a) *to the state library for distribution, five copies*;

(b) to the library of congress, *four* copies;

(c) *to the university of Montana law library, two copies*;

(d) to each justice of the supreme court, district judge, *and* county attorney, one copy;

(e) to the law library of the state of Montana, *four* copies;

(f) to the attorney general, 11 copies;

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(g) to *other* institutions, publishers, authors, and libraries with which the state law librarian has established a system of exchange *for materials of comparable value, up to 50 copies; and*

(h) to the university of Montana up to 50 copies to be used by the law librarian of the university for the purpose of exchanges *for materials of comparable value* with *libraries,* universities, and institutions of higher education in other states.

(2) All reports distributed to state, district, and other officers in the state are for the use of their office and shall be, by the person receiving them, turned over to his successor in office."

Approved April 21, 1981.

CHAPTER NO. 495

AN ACT TO REVISE THE APPROPRIATION AND BUDGET PROCEDURES RELATING TO COMMUNITY COLLEGES; AMENDING SECTIONS 20-15-403 AND 20-15-404, MCA; AND REPEALING SECTIONS 20-15-302, 20-15-303, 20-15-306, AND 20-15-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Proposed budget.** The board of trustees of a community college district shall submit a proposed budget to the board of regents by August 15 immediately preceding each regular legislative session. The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in [section 4]. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary. By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.

Section 2. **Appropriation.** It is the intent of the legislature that all community college spending, other than from restricted funds or funds generated by an optional, voted levy, be controlled under provisions of the state general appropriations act. The unrestricted budget shall be based on a calculated dollar amount per full-time equivalent student. The student count may not include those enrolled in community service courses as defined by the board of regents.

Section 3. **Funding sources.** The annual operating budget of a community college district shall be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

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(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that shall be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents shall be considered restricted to a specific purpose.

Section 4. **Calculation and approval of operating budget.** (1) Annually by June 15, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college shall be financed in the following manner:

(a) General fund appropriation. The general fund appropriation shall represent a specific percentage of the total unrestricted budget authorized by the legislature and approved by the regents. This percentage shall be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(b) An estimate of revenues to be generated by student tuition and fees, and all other unrestricted income, revenues, or balances shall be added to the state general fund appropriation and the total subtracted from the total unrestricted budget. The difference shall be obtained by a mandatory levy.

(c) The funding obtained in subsection (b) of subsection (1) is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget shall be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy shall be detailed separately in an expenditure schedule.

(e) The spending of each restricted funding source shall be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (c), (d), and (e) of subsection (1) shall represent the total operating budget of the community college.

(g) If revenues to the unrestricted budget exceed estimates, the excess shall be used to reduce the mandatory levy in the subsequent year.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. A board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

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Section 5. **Tax levy.** On the second Monday in August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by subsection (1)(b) of [section 4] and the voted levy prescribed by subsection (5) of [section 3] if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

Section 6. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-30-221, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 7. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

(3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-712, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207 through 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;

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(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of *20-9-502,* 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206."

Section 8. **Repealer.** Sections 20-15-302, 20-15-303, 20-15-306, and 20-15-307, MCA, are repealed.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1981.

CHAPTER NO. 496

AN ACT TO GENERALLY CLARIFY AND REVISE THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM ACT REGARDING MEMBERSHIP, CONTRIBUTIONS, AND BENEFITS; AMENDING SECTIONS 19-3-104, 19-3-201, 19-3-605, 19-3-703, 19-3-805, 19-3-902, 19-3-906, 19-3-1103, 19-3-1106, 19-3-1301, AND 19-3-1304, MCA; REPEALING SECTION 19-3-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-104, MCA, is amended to read:

"19-3-104. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(4) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(5) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(7) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

(8) "Board" means the public employees' retirement board provided for in 2-15-1009.

(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(11) "Creditable service" means the aggregate of membership service and prior service.

(12) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

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(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (11) of this section.

(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(22) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(24) "Regular interest" means interest at the rate set from time to time by the board.

(25) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(26) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(27) "Retirement fund" means the public employees' retirement account in the agency fund.

(28) "Retirement system" means the public employees' retirement system created by this chapter.

(29) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(30) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(31) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 2. Section 19-3-201, MCA, is amended to read:

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"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this chapter. The contract may include any provisions which are consistent with this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract shall be subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(b) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age, or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if, in its opinion, said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract shall be subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system shall receive notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, not less than 20 days after the approval of the resolution by the employees, may adopt by a ⅔ majority a resolution terminating

P.E.R.S. coverage effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 3. Section 19-3-605, MCA, is amended to read:

"**19-3-605. Transfer between funds.** Any fund out of which payments are made under the provisions of this chapter may be reimbursed to the extent of such payments by transfer of a sufficient sum for the reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the *department of administration* the amounts to be thus transferred and the funds from and to which the transfer is to be made, and the *department* shall thereupon make the transfer as directed in the certificate."

Section 4. Section 19-3-703, MCA, is amended to read:

"**19-3-703. Refund of member's contributions on termination of service.** (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid his accumulated contributions *at his request.*

(2) Upon qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of his accumulated contributions if after a previous discontinuance of service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in 19-3-704.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the department of administration to make such direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions."

Section 5. Section 19-3-805, MCA, is amended to read:

"**19-3-805. Employer contribution to administrative expense.** (1) The board may assess and the department of administration shall collect a fee from each employer for the purpose of defraying the administrative expense of this chapter, not to exceed 0.3% of gross compensation.

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(2) In addition to the contributions elsewhere provided in this chapter, on *January* 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. These fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter."

Section 6. Section 19-3-902, MCA, is amended to read:

"19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age *50* and completed 5 years of qualified service is eligible for early retirement. *A member who has completed 25 years or more of state service is eligible for early retirement.*"

Section 7. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement allowance. *(1)* The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60 *or upon completion of 30 years of creditable service* pursuant to 19-3-904.

(2) The early retirement allowance shall be determined as prescribed in 19-3-904 with the exception that the allowance must be reduced as follows:

(a) by ½ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had completed 30 years of creditable service."

Section 8. Section 19-3-1103, MCA, is amended to read:

"19-3-1103. Disability allowance reduced by earnings. *(1)* Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in 19-3-104, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section."

Section 9. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Reduction of retirement allowance upon limited reemployment. Any person receiving a service retirement allowance, not as a beneficiary, who is not eligible for membership may return to covered employment for a period not to exceed 60 working days in any fiscal year.

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The retirement allowance of a retiree so employed will be reduced by *$1 for each $2 earned in excess of $3,500 for each calendar year.*"

Section 10. Section 19-3-1301, MCA, is amended to read:

"19-3-1301. Designation of beneficiary. The *beneficiaries* of a member shall be such *persons* as the member shall designate in the appropriate written application. A member may revoke such designation and name different *beneficiaries* by filing written *notice* with the board."

Section 11. Section 19-3-1304, MCA, is amended to read:

"19-3-1304. Payment to custodian of minor beneficiary. *(1)* If any benefit from the system is payable to a minor, the benefit *must* be paid to *one of the following:*

(a) a surviving parent, if any;

(b) a parent awarded custody of the minor in a divorce proceeding;

(c) a custodian designated under Title 72, chapter 26, MCA;

(d) a guardian appointed pursuant to Title 72, chapter 5, part 2, MCA; or

(e) a conservator appointed pursuant to Title 72, chapter 5, part 4, MCA.

(2) The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority."

Section 12. **Repealer.** Section 19-3-1303, MCA, is repealed.

Section 13. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

CHAPTER NO. 497

AN ACT TO ALLOW SIGNS OR DISPLAYS THAT ADVERTISE CULTURAL EXHIBITS OF NONPROFIT HISTORICAL OR ARTS ORGANIZATIONS TO BE ERECTED IN PROXIMITY TO HIGHWAYS; AMENDING SECTION 75-15-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-15-111, MCA, is amended to read:

"75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

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(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B.

(2) Outdoor advertising authorized under subsections (a), (d), and (e) of (1) of this section shall conform with standards contained in and shall bear permits required in rules which are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main-traveled way and visible from such main-traveled way unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of (1) of this section. Should such outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this part."

Approved April 22, 1981.

CHAPTER NO. 498

AN ACT TO AUTHORIZE THE GOVERNOR TO NEGOTIATE WITH OTHER STATES TO ESTABLISH AGREEMENTS FOR SUBMITTING APPLICATION TO THE RAIL PASSENGER CORPORATION FOR INSTITUTION OF RAIL PASSENGER SERVICE IN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Agreements for rail passenger service application.** The governor or his authorized representative may negotiate with the proper authority representing any other state to establish an agreement to

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enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act (45 U.S.C. 563(b)). The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature.

Approved April 22, 1981.

CHAPTER NO. 499

AN ACT TO REQUIRE FORMULATION OF A COUNTY ALCOHOL TREATMENT AND PREVENTION PLAN ANNUALLY; AMENDING SECTION 53-24-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-211, MCA, is amended to read:

"53-24-211. County plan to be submitted to department. (1) By January 1 *of each year*, each county must submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of alcoholism.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing nonprofit and local government programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of alcoholism.

(3) The department shall approve or disapprove the countywide plan. If the department disapproves a plan, the county may submit another plan to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) (a) After *January 1 of each year*, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if the county has not submitted a plan as required by subsection (1).

(b) After June 30 *of each year*, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if a county plan has not been approved by the department.

(5) The department may adopt rules regarding the submission, approval, and disapproval of plans."

Approved April 22, 1981.

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CHAPTER NO. 500

AN ACT TO ALLOW POLITICAL SUBDIVISIONS OF THE STATE TO SET THE INTEREST RATE FOR BONDS BY DELETING SPECIFIC MAXIMUM RATES ALLOWABLE; AMENDING SECTIONS 7-7-2251, 7-7-4251, 7-7-4275, 7-7-4432, 7-13-2510, 7-14-2745, 7-15-4322, 7-31-112, 7-34-2415, 17-5-102, 20-9-410, 20-9-426, 20-9-427, 20-9-430, 67-11-303, AND 69-4-332, MCA; SUSPENDING THE OPERATION OF SECTIONS 7-7-2208 AND 7-7-4207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2251, MCA, is amended to read:

"7-7-2251. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19.., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the total amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of the said serial bonds will become payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

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All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

.....
(Chairman, Board of County Commissioners)
of .....County
State of Montana

.....
(Clerk of the Board of County Commissioners) of .....County, Montana
Address ....., Montana"

Section 2. Section 7-7-4251, MCA, is amended to read:

"7-7-4251. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of said serial bonds will become due and payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding ....% per annum, payable semiannually, on the .... day of .... and on the .... day of .... in each year and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

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Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

.....
Mayor of the (city or town) of
....., Montana

ATTEST:

.....
(City or Town) Clerk"

Section 3. Section 7-7-4275, MCA, is amended to read:

"7-7-4275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments *pursuant to 17-5-102*. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43."

Section 4. Section 7-7-4432, MCA, is amended to read:

"7-7-4432. Details relating to revenue bonds. Bonds authorized to be issued under this part shall bear interest at such rate or rates not exceeding *the limitation of 17-5-102*, payable semiannually; may be in one or more series; may bear such date or dates; may mature at such time or times not exceeding 40 years from their respective dates; may be payable in such place or places; may carry such registration privileges; may be subject to such terms of redemption; may be executed in such manner; may contain such terms, covenants, and conditions; and may be in such form,

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either coupon or registered, as such resolution or subsequent resolutions may provide."

Section 5. Section 7-13-2510, MCA, is amended to read:

"7-13-2510. Powers of district. A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding *the limitation of 17-5-102* payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

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(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512."

Section 6. Section 7-14-2745, MCA, is amended to read:

"7-14-2745. Mode of payment of assessment — installment payments. (1) Installment payments shall be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments shall be in the form of bonds which shall draw interest, *not to exceed the limitations of 17-5-102,* per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(4) The board and the assessor shall, at the time of levying the assessment and in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(5) Each year thereafter, the treasurer shall collect one of the installments, together with the interest due thereon and the interest due on the installments thereafter to become due.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments."

Section 7. Section 7-15-4322, MCA, is amended to read:

"7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding *the limitation of 17-5-102,* be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) The bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold

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at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government."

Section 8. Section 7-31-112, MCA, is amended to read:

"7-31-112. Details relating to bonds. (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;

(e) bear interest at *a* rate *not exceeding the limitations of 17-5-102*, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached."

Section 9. Section 7-34-2415, MCA, is amended to read:

"7-34-2415. Details of bonds. (1) The bonds may be sold at public or private sale and shall bear interest at a rate or rates not exceeding *the limitation of 17-5-102*. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 through 7-34-2418, any bonds issued pursuant to 7-34-2411 through 7-34-2418 by a county shall be payable as to principal and interest solely from revenues of the county and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable."

Section 10. Section 17-5-102, MCA, is amended to read:

"17-5-102. Rate of interest on bonds to be determined by governing bodies. *(1)* Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine.

(2) The provisions of this section establish the rate of interest on bonds of political subdivisions as defined in 17-5-101 and expressly supersede any other statutory limitation on the rate of interest to be borne by bonds of political subdivisions."

Section 11. Section 20-9-410, MCA, is amended to read:

"20-9-410. Limitation of term and interest — timing for redemption. School district bonds shall not be issued for a term longer

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than 20 years, except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than 5 years shall be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds. The interest shall not exceed *the limitation of 17-5-102* and shall be payable semiannually."

Section 12. Section 20-9-426, MCA, is amended to read:

"20-9-426. Preparation and form of ballots for bond election. The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... *percent (....%)* per annum, payable semiannually, during a period not more than .... years, for the purpose .... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO."

Section 13. Section 20-9-427, MCA, is amended to read:

"20-9-427. Notice of bond election by separate purpose. (1) Any school district bond election shall be conducted in accordance with the school election provisions of this title, except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the .... day of ...., A.D., 19.., an election of the registered electors of School District No. .... of .... County, state of Montana, will be held on the .... day of ...., A.D., 19.., at .... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... *percent (....%)* per annum, payable semiannually, for the purpose of .... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether

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amortization or serial bonds, will be payable in installments over a period not exceeding .... (state number) years.

The polls will be open from .... o'clock ....m. and until .... o'clock ....m. of the said day.

Dated and posted this .... day of ...., A.D., 19...

.....
Chairman, School District No.... of
.....County
Address .....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice, together with the proposed amount of bonds therefor."

Section 14. Section 20-9-430, MCA, is amended to read:

"20-9-430. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of...., 19.., at the hour of .... o'clock ....m. at ...., in the school district, sell to the highest and best bidder for cash either amortization or serial bonds of the school district in the total amount of .... dollars ($....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, the sum of .... dollars ($....) of the serial bonds will become payable on the .... day of ...., 19.., and the sum of .... dollars ($....) will become payable on the same day each year thereafter until all of the bonds are paid.

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which

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they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of .... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

.....
Chairman, School District No.... of
.....County
Address: .....

ATTEST: Subscribed and sworn to before me this .... day of ....., 19...; ..... Notary Public for the State Residing at ...., Montana. My Commission expires ....."

Section 15. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding *the limitation of 17-5-102.* Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues

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of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, by [7-7-4227 through 7-7-4234] for an election called by cities and towns, and [7-7-2229 through 7-7-2236] for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above."

Section 16. Section 69-4-332, MCA, is amended to read:

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"**69-4-332. Issuance of bonds.** (1) After the expiration of 30 days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable, interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Whenever any ordinance authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published.

(2) The bonds shall bear interest at *a rate* not exceeding *the limitations of 17-5-102*, payable as specified by the governing body over a period not exceeding 20 years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

(3) The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer, with the corporate seal thereto affixed as appropriate, and attested to by the clerk of the governing body. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond."

Section 17. **Effect on bonds previously authorized.** If prior to [the effective date of this act] a political subdivision was authorized to issue bonds pursuant to a law that limited the rate of interest on the bonds, it may issue all of the bonds so authorized under the provisions of 17-5-102 even if the rate of interest on the bonds exceeds the maximum rate permissible prior to [the effective date of this act].

Section 18. Redemption of bonds — optional method. Between the effective date and termination date of this act, a governing body in connection with the issuance of bonds may, at its option, provide that such bonds shall be redeemable at such time or times and upon such terms and conditions as the governing body shall deem to be in the best interest of the public, notwithstanding any statutory provision to the contrary.

Section 19. **Codification instruction.** Sections 17 and 18 are intended to be codified as an integral part of Title 17, chapter 5, part 1.

Section 20. **Suspension.** The operation of sections 7-7-2208 and 7-7-4207, MCA, is suspended until July 1, 1983.

Section 21. **Effective date — termination.** This act is effective on passage and approval and terminates on July 1, 1983.

Approved April 23, 1981.

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CHAPTER NO. 501

AN ACT TO GENERALLY REVISE THE PROCEDURE FOR PAYMENT OF TAXES AND LICENSE FEES UNDER PROTEST; TO ALLOW THE STATE TAX APPEAL BOARD TO ORDER REFUND OF PROTESTED TAXES AND LICENSE FEES IN CERTAIN CASES; AMENDING SECTIONS 15-1-402, 15-1-403, 15-2-303, AND 15-16-601, MCA; AND REPEALING SECTIONS 15-1-401, 15-15-105, AND 15-15-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [this act] to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court.

Section 2. **Board may order refund.** (1) In any appeal before the state tax appeal board when a taxpayer has paid taxes or license fees under written protest and the taxes or license fees are held by the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment, exclusive of costs, if the board finds that the taxes or license fees should be refunded.

(2) The state tax appeal board's judgment issued pursuant to subsection (1) shall be held in abeyance:

(a) until the time period for appeal specified in 15-1-402(4) has passed; or

(b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303.

Section 3. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected to be refunded. (1) *(a)* Any taxes, per centum, and costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer as provided in 15-1-504 and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

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(b) When any part of the taxes, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(c) No order for the refund of any taxes, *license fees,* per centum, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, *license fee,* penalty, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(d) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds.

(2) Upon the entering of judgment under [section 2], the county commissioners of the affected county shall order a refund of such portion of the taxes or license fees as the state tax appeal board has judged should be refunded."

Section 4. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest — action to recover. (1) *The person upon whom a tax or license fee is being imposed may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:*

(a) be made to the officer designated and authorized to collect it; and

(b) specify the grounds of protest.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax *or license fee* was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax *or license fee* was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with *timely* summons and complaint within the time prescribed.

(4) Any action instituted to recover any such portions of tax *or license fee* paid under protest shall be commenced and summons *timely* served within *60* days after the date of *the final decision of the state tax appeal board.*

(5) When any *protested* tax *or license fee* is payable in installments, then *any* subsequent installment portion *considered* unlawful *by the state*

tax appeal board need not be paid and no action *or suit* need be commenced to recover the same, but the determination of the action *or suit* commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him *or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.*

(6) All portions of taxes *and license fees* paid under protest *to a county or municipality* shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as *a* protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action *or suit* to recover the same.

(7) Nothing contained herein prohibits the investment of the *money* of this fund in the state unified investment program. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(8) (a) If no action is commenced within the time herein specified or if such action *is* commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax *or license fee* shall be taken from *the* protest fund and deposited to the credit of the fund or funds to which the same property belongs.

(b) If such action is finally determined adversely to *a* county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action *from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed,* refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax *or license fee,* with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax *or license fee* and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest."

Section 5. Section 15-1-403, MCA, is amended to read:

"15-1-403. Assessment for taxation — increase over statement of owner. (1) Whenever any person has delivered to the department of revenue or its agent a sworn statement of his property subject to taxation as now provided by law and giving the estimated value of such property and the department or its agent shall increase such estimated value or add other property to such assessment list, the agent shall, at least 10 days prior to the meeting of the county tax appeal board, give to

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such person written notice of such change, which notice shall be substantially in the following form:

(Date) .....

Mr. .....:

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

....., Agent
Department of Revenue

(2) Such person may then appear before the county tax appeal board and contest the same. If the assessment of any such person has been added to or changed, either by the department or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the *state tax appeal board* to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in 15-1-402."

Section 6. Section 15-2-303, MCA, is amended to read:

"15-2-303. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this part.

(2) Proceedings for review shall be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located (except the taxpayer may, at his option, file in the district court of the first judicial district) and serving a copy of the petition on the state tax appeal board within *60* days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within *60* days after the decision thereon. All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceedings.

(3) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission shall be instituted in the district court of the first judicial district.

(4) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced."

Section 7. **Repealer.** Sections 15-1-401, 15-15-105, and 15-15-106, MCA, are repealed.

Approved April 23, 1981.

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CHAPTER NO. 502

AN ACT TO PROVIDE FOR AUTHORIZATION OF A COUNTY TAX APPEAL BOARD TO MEET BEYOND THE NORMAL TIME PERIOD IN CERTAIN CASES; AMENDING SECTIONS 15-2-201 AND 15-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-201, MCA, is amended to read:

"15-2-201. Powers and duties. (1) It shall be the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(3) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law."

Section 2. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They

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shall receive compensation of $25 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but, *except as provided in 15-2-201,* not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board."

Section 3. **Immediate effective date.** This act is effective on passage and approval.

Approved April 23, 1981.

CHAPTER NO. 503

AN ACT TO PROVIDE FOR HYDROELECTRIC POWER GENERATION AT APPROPRIATE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WATER PROJECTS; PROVIDING FOR THE LEASE OF SUCH PROJECTS FOR THE PURPOSE OF POWER GENERATION; SPECIFICALLY AUTHORIZING THE CONSTRUCTION AND OPERATION OF SUCH FACILITIES BY THE DEPARTMENT IF NO LEASE IS CONSUMMATED; AND ESTABLISHING THE METHOD OF SALE OF POWER GENERATED AT SUCH FACILITIES.

WHEREAS, the availability of energy from traditional sources is diminishing; and

WHEREAS, the demand for energy from the state's citizens is increasing, due to population growth and economic expansion; and

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WHEREAS, because of newly developing technology and increasing energy costs, small-scale hydroelectric power generation is becoming an economically feasible additional source of energy; and

WHEREAS, the state of Montana currently owns and controls many water projects which may have potential capacity for the small-scale generation of hydroelectric energy; and

WHEREAS, it is in the best interest of the people of Montana to utilize Montana's water resources to the fullest extent possible.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Survey of power generation capacity.** The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control and shall periodically update such studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

(1) the estimated cost of construction of a facility;

(2) the estimated cost of maintaining, repairing, and operating the facility;

(3) the estimated cost of tying into an existing power distribution channel;

(4) the ability of public utilities or rural electric cooperatives to lease and operate such a facility;

(5) the debt burden to be serviced;

(6) the revenue expected to be derived; and

(7) the likelihood of a reasonable rate of return on the investment.

Section 2. **Lease of sites to public utilities or electric cooperatives — first option.** (1) If after completion of the feasibility study of a particular project the board determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation pursuant to [sections 2 through 8].

(2) In issuing a notice of availability of a site for lease under this section, the board shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state.

Section 3. **Receipt of applications.** (1) Applications for lease may be submitted by any public utility, as defined in 69-3-101, or electric cooperative, organized under Title 35, chapter 18, that sells power to Montana customers or by any Montana corporation proposing to use a substantial portion of the electricity to be generated in its own operation.

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(2) The board shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the board requests.

Section 4. **Determinations by the board.** (1) Within a reasonable time following the conclusion of the lease application period, the board shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the board must reject any or all applications or must award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application.

Section 5. **Lease conditions.** (1) The lessee must pay a royalty to the state as required in the lease.

(2) The board may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease.

Section 6. **Compliance with federal law.** If the project must hold a license, permit, or exemption under federal law, the license, permit, or exemption shall be held by the department.

Section 7. **Duration of lease.** The term of the lease may not exceed the term of the license, permit, or exemption held by the department under [section 6] and may in no event exceed 55 years.

Section 8. **Duties of the department.** The department has primary responsibility for supervision of any such lease. Any disputes that arise between the department and the lessee may be appealed to the board, upon written petition of either party.

Section 9. **Power generation by department authorized.** (1) If no lease applications are received under [section 3] or if the board rejects all lease applications under [section 4], the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until such time as the department has clear and convincing

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evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility shall be accomplished in a manner determined by the board to be most feasible.

(3) The department may not sell power generated at a facility except to a public utility, a rural electrical cooperative, or a federal power-marketing agency organized in Montana and selling power to Montana customers.

Section 10. **Sale of power.** If the operator of a small-scale hydroelectric generation facility under this chapter and a public utility or an electric cooperative are unable to mutually agree to a contract for the sale of electricity or a price for the electricity purchased by the utility or electric cooperative, the public service commission shall require the utility or electric cooperative to purchase the power under rates and terms established as provided in [sections 11 through 13].

Section 11. **Determination by the public service commission.** A determination of the rates and terms under which the power must be purchased shall be made by the public service commission upon petition of the facility operator or a public utility or electric cooperative or during a rate proceeding involving the review of rates paid for electricity purchased from the facility. The commission shall render a decision within 120 days from receipt of the petition or before the completion of the rate review proceeding. The rate and terms of the determination must be according to the standards specified in [section 12].

Section 12. **Standards for the determination.** (1) The standards for the determination provided for in [section 11] by the public service commission shall include the following:

(a) Long-term contracts for the purchase of electricity by the utility or electric cooperative from a small-scale hydroelectric facility under this chapter shall be encouraged in order to enhance the economic feasibility of such facilities.

(b) The rates paid by a utility or electric cooperative to a small-scale hydroelectric facility may not exceed, over the term of the purchase contract, the incremental cost to the utility or electric cooperative of the electricity that, but for the purchase from the small-scale hydroelectric facility, the utility or electric cooperative would generate or purchase from another source.

(c) The rates to be paid by a utility or an electric cooperative for power purchased from a small-scale hydroelectric facility shall be established with consideration of the availability and reliability of the power produced.

(2) The commission may set these rates by use of any of the following methods:

(a) the levelized avoided cost over the term of the contract;

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(b) the cost of production for the small-scale hydroelectric facility plus a just and reasonable return; or

(c) any other method that will promote the development of small-scale hydroelectric facilities.

Section 13. **Purchase of power by electric cooperative not agreeing to be bound by public service commission determination.** If any electric cooperative wishing to purchase power from a small-scale hydroelectric facility under this chapter refuses to submit to the ratemaking authority of the public service commission established in [section 11], then the rate for such cooperative may be determined by the federal energy regulatory commission upon proper petition. The facility shall sell power in accordance with such determination, so long as the rates and terms so established will allow the facility a reasonable return.

Section 14. **Codification instruction.** Sections 1 through 13 are intended to be codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to sections 1 through 13.

Approved April 23, 1981.

CHAPTER NO. 504

AN ACT TO REVISE THE METHOD OF DISINCORPORATION OF A MUNICIPALITY; PROVIDING FOR A DISINCORPORATION ELECTION UPON TWO-THIRDS VOTE OF THE CITY GOVERNING BODY; AMENDING SECTION 7-2-4902, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4902, MCA, is amended to read:

"7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the registered electors of a city or town equal in number to 20% of the number of electors voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, *or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then* the board shall order, within 60 days, that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall be not less than 60 days or more than 120 days after the board orders the election."

Approved April 23, 1981.

CHAPTER NO. 505

AN ACT TO CREATE A WATER DEVELOPMENT PROGRAM; ESTABLISHING A LOAN AND GRANT PROGRAM FOR WATER DEVELOPMENT PROJECTS AND ACTIVITIES; ESTABLISHING AN EARMARKED WATER DEVELOPMENT ACCOUNT; ALLOCATING A PORTION OF THE COAL SEVERANCE TAX PROCEEDS; ALLOCATING A PORTION OF THE INTEREST INCOME FROM THE RESOURCE INDEMNITY TRUST ACCOUNT; CREATING AUTHORITY FOR WATER DEVELOPMENT BONDS; CREATING AUTHORITY FOR COAL SEVERANCE TAX TRUST FUND BONDS; REQUIRING A LIMITED APPROPRIATION OF INCOME AND INTEREST FROM THE COAL SEVERANCE TAX TRUST; LIFTING THE INTEREST CEILING ON WATER CONSERVATION REVENUE BONDS; AMENDING SECTIONS 15-35-108, 15-38-202, 85-1-102, 85-1-301, 85-1-332, 90-2-101, 90-2-111, AND 90-2-124, MCA; REPEALING SECTIONS 85-1-333 AND 85-1-334, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose and policies.** (1) The legislature finds and declares that in order that the people of Montana may enjoy the full economic and recreational benefits of the state's water resources, the state must establish this long-term water development program providing financial and administrative assistance to private, local, and state entities for water resource development projects and activities.

(2) The purpose of the water development program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources.

(3) The legislature recognizes that water is one of the most valuable and important renewable resources in Montana; therefore, it is appropriate that a portion of the taxes on the removal of nonrenewable resources be dedicated to the conservation, development, and beneficial use of water resources.

(4) The development of water resources is of a high priority because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of water.

(5) This water development program is an integral part of the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan".

Section 2. **Objectives.** The department shall administer a water development program to accomplish such objectives as rehabilitation of state-owned water projects and works; promotion of private, local government, and state water development; development of water-based recreation and the protection of water resources for the benefit of agriculture, flood control, and other uses; development of offstream and tributary storage; and development of state-tribal, state-federal, and state-tribal-federal

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water projects. The storage of water for existing and future beneficial uses shall be given the highest priority unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people. The water development program is the key implementation portion of the state water plan and shall be administered to accomplish the objectives of the plan.

Section 3. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Cost of works" means the cost of construction; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(5) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under [section 6] but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(6) "Project" means any one of the works herein defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(8) "Water development clearance account" means a separate account created by [section 18] within the bond proceeds and insurance clearance

fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients from proceeds of bonds issued under [sections 1, 2, and 4 through 23].

(9) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to such purposes as the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(10) "Water development earmarked account" means a separate account created by [section 5] within the earmarked revenue fund of the state treasury for the purposes of the water development program as set forth in [section 5].

(11) "Water development project" means a project as defined in subsection (6), except that water development projects are not limited to projects owned or operated by the department.

(12) "Water development sinking account" means a separate account created by [section 4] within the sinking fund of the state treasury to be used as provided in [section 20].

(13) "Works" means all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all such works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 4. **Water development sinking account created — coal severance tax allocated.** (1) There is created a water development sinking account within the sinking fund established in 17-2-102.

(2) The state pledges and allocates and directs to be credited to the water development sinking account, as received, 1 ¼ % of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax to the trust fund established under Article IX, section 5, of The Constitution of the State of Montana.

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Section 5. **Water development earmarked account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development earmarked account within the earmarked revenue fund established in 17-2-102.

(2) There shall be paid into the water development earmarked account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust account as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by [section 4] to the water development sinking account above debt service requirements as provided in and subject to the conditions of [section 20].

(3) Appropriations may be made from the water development earmarked account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the water development sinking account and only that amount may be

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appropriated from the account for loans and grants for water development projects and activities and for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in administering the loans and grants.

Section 6. **Grants and loans to state and local governments.** (1) The department may recommend to the legislature that grants and loans be made from coal severance tax proceeds deposited in the water development earmarked account and loans be made from water development bond proceeds deposited in the water development clearance account to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans it finds consistent with the policies and purposes of the program.

(2) The grants and loans provided for by this section may be made for the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development, or protection of the water and related agricultural, land, fish, wildlife, and water recreation resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for and the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature.

Section 7. **Grants and loans to private persons.** (1) To encourage the construction and development of water development projects and activities, the department may make grants and loans to private persons from funds appropriated from the water development earmarked account and may make loans to private persons from the water development clearance account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water development projects and activities, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select water development projects and activities for which grants or loans may be awarded.

Section 8. **Division of funds between water development projects and activities.** (1) The department shall recommend, to the extent possible, that water development projects and water development activities be funded equally when making recommendations to the legislature on loans and grants for state and local water development under [section 6].

(2) The department shall, to the extent possible, in approving grants and loans to private persons fund water development projects and water development activities equally.

Section 9. **Applications for grants and loans to private persons.** (1) A private person may apply for a grant or loan to finance a

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water development project or activity to be constructed, developed, and operated in Montana.

(2) An application for a loan or grant must be in the form prescribed by the board and contain or be accompanied by any information necessary to adequately describe the proposed project or activity and necessary for evaluation of the proposed project or activity under the criteria set out in [sections 10 and 11].

Section 10. **Eligibility for a loan or grant to a private person.** The department may not award a grant or loan to a private person unless the department finds, based on the application and the department's investigation and evaluation of the proposal, that:

(1) the proposed water development project or activity:

(a) will promote, enhance, or advance the purpose, policies, and objectives of the water development program;

(b) will be constructed, developed, and operated within the state of Montana;

(c) will be economically feasible. (A project or activity is economically feasible if the project benefits exceed the project costs. The department shall consider only tangible benefits and costs in calculating economic feasibility.)

(d) will be an efficient use of natural resources including water, energy, land, and air. (An efficient use is one that minimizes waste.)

(e) will provide multipurpose facilities to the extent practicable;

(f) will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(g) will provide associated public benefits in addition to any private benefits the project or activity may provide; and

(h) is needed to accomplish the purpose for which the water development project or activity is proposed;

(2) the applicant has adequate financial resources to construct, operate, and maintain the water development project or activity. The department shall consider financial resources from any source for which the applicant has qualified, including a water development grant or loan.

(3) the applicant holds or can acquire all necessary lands, other than public lands, and interests therein and water rights necessary for the construction, operation, and maintenance of the proposed water development project or activity;

(4) if the application is for a loan, the applicant is credit-worthy and able and willing to enter into a contract with the department for loan repayment and construction or development of the proposed water development project or activity; and

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(5) if the application is for a grant, the applicant is able and willing to enter into a contract with the department for construction or development of the proposed water development project or activity.

Section 11. **Evaluation of grants and loans to private persons.** The department shall consider the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for water development projects and activities that are eligible for funding under [section 10]:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A water development project or activity that will be used as part of a family farm shall be given preference. A family farm is one devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A water development project or activity that will utilize or develop water reserved under 85-2-316 shall be given preference.

(4) The department, to the extent practicable, shall attempt to achieve geographic balance in the promotion of water development projects and activities through the awarding of loans and grants to private persons.

(5) The extent to which the water development project or activity will fully utilize water resources and promote the conservation and efficient use of the water resource shall be evaluated and considered.

(6) Projects or activities that could not be accomplished without the assistance of a loan or grant shall be given preference.

(7) The department shall give due consideration to any other factor that, in the department's judgment, is important to the evaluation of the water development project or activity in light of the purposes, policies, and objectives of the water development program.

Section 12. **Department to solicit views.** The department shall solicit and consider in its evaluation of proposed projects and activities the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, of the federal government, and of other interested and affected persons.

Section 13. **Rulemaking authority.** The board shall adopt rules:

(1) prescribing the form and content of applications for grants and loans;

(2) governing the application of the criteria for awarding loans and grants to private persons;

(3) providing for the servicing of loans including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made; and

(4) describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary.

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Section 14. **Limits on loans.** (1) No loan for a water development project or activity may be made from the water development earmarked or clearance account that exceeds the least of $100,000, 10% of the estimated total funds potentially available for loans in the water development earmarked and clearance accounts in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under [sections 1, 2, and 4 through 23].

Section 15. **Limits on grants from water development earmarked account.** The maximum grant awarded to a private person may not exceed 5% of the estimated total funds potentially available in the water development earmarked account for grants in the biennium in which the grant will be made or 25% of the total project cost, whichever is less.

Section 16. **Security interests.** The state has a lien upon a project constructed with money from the water development earmarked or clearance account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

Section 17. **Administration of loans and grants.** The department shall:

(1) administer the loan and grant program established by [sections 1, 2, and 4 through 23];

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests.

Section 18. **Issuing bonds.** (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

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(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development sinking account will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) There is created a water development clearance account within the bond proceeds and insurance clearance fund established in 17-2-102.

(6) All proceeds of bonds issued under this section, other than refunding bonds, must be deposited in the water development clearance account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development sinking account and must be applied to the payment, redemption premiums, and interest on the particular bond issue from whose proceeds the loan was made. All proceeds of refunding bonds must be deposited in the water development sinking account and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

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(7) All actions taken by the board of examiners under this section or [section 20] must be authorized by a vote of a majority of the members of the board of examiners.

Section 19. **Bond proceeds only for loans.** Water development bond proceeds may be used only for the purpose of making loans as provided in the water development program.

Section 20. **Sinking fund account — pledge and administration of sufficient balance.** (1) The legislature may levy, impose, assess, and pledge and appropriate to the water development sinking account any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the water development sinking account, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that account and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the water development sinking account must be used first to pay interest, principal, and redemption premiums when due and payable with respect to water development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) has been accumulated in the water development sinking account, money at any time received in the water development sinking account in excess of that amount must be transferred by the treasurer to the water development earmarked account. If the balance on hand at any time in the water development sinking account is not sufficient to accumulate required reserves under subsection (2) and is not restored to the required amount within 3 months thereafter from funds specifically pledged and appropriated to the water development sinking account, the treasurer in accordance with the pledge of the full faith and credit and taxing powers of the state shall transfer an amount sufficient to restore the required balance from the general fund to the water development sinking account.

Section 21. **Water development refunding bonds.** (1) The board of examiners may issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the water development sinking account. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities thereof so far as determined by the board of examiners to be necessary to assure that the funds then pledged to the water development sinking account will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of

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reducing the interest cost or the total amount of principal and interest payable thereon.

(2) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the water development sinking account that are needed and available for the purpose or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this part in the same manner as the bonds refunded thereby.

Section 22. **Report to the legislature.** The department shall prepare a biennial report to the legislature describing the status of the water development program. The report must describe ongoing projects and activities and those which have been completed during the biennium. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report shall be submitted to the president of the senate and the speaker of the house and to such other members as may request a copy.

Section 23. **Penalty.** No member, officer, attorney, or other employee of the board or the department may, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under [sections 1, 2, and 4 through 23] other than the salary, fee, or other compensation as he may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 or be imprisoned for not to exceed 2 years, or both.

Section 24. **State of Montana coal severance tax bonds.** [Sections 24 through 42] provide for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in [sections 24 through 42]) to finance water resource development projects and activities in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations.

Section 25. **Purpose and intent.** (1) The purpose of the coal severance tax trust fund bond provisions of [sections 24 through 42] is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific water resource development projects and activities in the state authorized by the legislature and to guarantee redemption of such bonds by revenue derived from

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the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include water resource development projects and activities as part of the water development program established in [sections 1, 2, and 4 through 23]. The legislature further intends that the income from water resource development projects and activities in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the water development earmarked account established in [section 5].

Section 26. **Coal severance tax trust subfunds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following subfunds:

(a) a coal severance tax bond subfund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a coal severance tax permanent subfund; and

(c) a coal severance tax income subfund.

(2) On each December 31 and June 30 the state treasurer shall transfer to the coal severance tax permanent subfund all money in the coal severance tax bond subfund except the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond subfund on the next ensuing semiannual payment date.

Section 27. **Investment of funds.** (1) Money in the coal severance tax bond subfund, the coal severance tax permanent subfund, and the coal severance tax income subfund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all subfunds must be transferred to and retained in the coal severance tax income subfund.

(2) Beginning on July 1, 1983, the legislature shall appropriate 15% of the income and earnings from all subfunds to be deposited to the coal severance tax permanent subfund each year. The funds appropriated to the coal severance tax permanent subfund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature.

Section 28. **Pledge of coal severance tax bond subfund.** The money in the coal severance tax bond subfund is pledged to the payment of the principal and interest on all state of Montana coal severance tax bonds. All bonds issued after [the effective date of sections 24 through 42] wherein the money in the coal severance tax bond subfund is pledged for their retirement shall be called "state of Montana coal severance tax bonds".

Section 29. **Authority to issue coal severance tax bonds.** The board of examiners, upon approval of the legislature as hereinafter provided, shall issue and sell coal severance tax bonds to finance such

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approved water resource development projects and activities when authorized to do so by any law that sets out the amount and purpose of the issue. Each project or activity shall be separately approved as to amount by a two-thirds vote of each house of the legislature.

Section 30. **Board of examiners to issue bonds.** The board of examiners may issue and sell coal severance tax bonds, and no other agency of the state is so authorized. Any action taken by the board of examiners under [sections 24 through 42] must be approved by a majority vote of its members.

Section 31. **Special fund revenues.** (1) If a law authorizing a coal severance tax bond issue for a specific purpose and in a specific amount contemplates the pledge and receipt of revenues, assets, or money other than or in addition to the money in the coal severance tax bond subfund, then the money derived from such pledged revenues, assets, and money must be paid into a special bond account for the benefit of such bonds, which must be part of the sinking fund of the state treasury fund structure.

(2) Money must be withdrawn from the coal severance tax bond account and paid to the special bond fund as necessary to provide for payment of principal and interest on the coal severance tax bonds secured by a pledge of the special account.

Section 32. **Continued tax deposit limit on additional bonds.** (1) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond subfund of the coal severance tax which, together with such other revenues, assets, and money as may be deposited to one or more special bond accounts pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond subfund, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenues, assets, or money deposited in one or more special bond accounts used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while such bonds are outstanding.

Section 33. **Form — principal and interest — fiscal agent — deposit of proceeds.** (1) Each series of coal severance tax bonds must be issued by the board of examiners at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates, maturing at

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such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board of examiners shall determine subject to the limitations contained in [sections 24 through 42].

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall be deposited in a bond proceeds and insurance clearance fund account established for that bond issue, except that any premiums and accrued interest received shall be deposited in a sinking fund account established for that bond issue.

Section 34. **Trust indenture.** In the discretion of the board of examiners, a series of coal severance tax bonds may be secured by a trust indenture by and between the board of examiners and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

Section 35. **Provisions for protecting bondholders.** Either the legislative act providing for the issuance of coal severance tax bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, and the departments, boards, or agencies of state government in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the projects financed with the proceeds of coal severance tax bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in [sections 24 through 42].

Section 36. **Personal liability — suit to compel performance.** (1) The members of the board of examiners and officers and employees of

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the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any coal severance tax bond issued by the board of examiners.

(2) Any holder of coal severance tax bonds or any person or officer being a party in interest, subject to any applicable coal severance tax agreements or trust indentures, may sue to enforce and compel the performance of the coal severance tax bond provisions as set out in [sections 24 through 42].

Section 37. **Negotiability of bonds.** Coal severance tax bonds issued are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

Section 38. **Signatures of board members.** In the case any member of the board of examiners whose signature appears on coal severance tax bonds or coupons ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery.

Section 39. **Refunding obligations.** (1) The state board of examiners may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 24 through 42], including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of [sections 24 through 42] that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under [sections 24 through 42]. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

Section 40. **Pledge of the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state.

Section 41. **Tax exemption of bonds — legal investments.** (1) All coal severance tax bonds, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivisions or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Coal severance tax bonds are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

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Section 42. **Limitation on amount of coal severance tax bonds issued.** No more than $250 million worth of coal severance tax bonds may be issued for water development projects and activities.

Section 43. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 5% to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) *1 ¼%* to the sinking fund to the credit of the renewable resource development bond account;

(h) 5% to the earmarked revenue fund to the credit of a trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the earmarked revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

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(j) 1 ¼% to the sinking fund to the credit of the water development sinking account;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 44. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust account — expenditure — minimum balance. *(1)* All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the account reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the account may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource trust account is greater than $10 million, 30% of the interest income of the resource indemnity trust account must be allocated to water development earmarked account created by [section 5]."

Section 45. Section 85-1-301, MCA, is amended to read:

"85-1-301. Water conservation revenue bonds. (1) The board is hereby authorized to provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, as hereinabove defined, of any one or more such public works, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall mature at such time or times, not more than 40 years from their date or dates, as may be fixed by such resolution but may be made redeemable before maturity at the option of the state, to be exercised by the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the rate of interest such bonds shall bear; the time or times of payment of such interest; the form of the bonds and the interest coupons to be attached thereto; and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in such amounts as may be determined by the board, and the board may sell the bonds in such manner and for such price as it may determine to be for the best interests of the state. The proceeds of such bonds shall be used solely for the payment of the cost of the works and shall be checked out in such manner and under such restrictions, if any, as the board may provide.

(3) Each resolution providing for the issuance of bonds shall set forth the project or projects for which the bonds are to be issued, and the bonds

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authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series letter or letters and may be sold and delivered at one time or from time to time."

Section 46. Section 85-1-332, MCA, is amended to read:

"85-1-332. Disposition of moneys collected. For the purpose of carrying out the provisions of this chapter and such other water resource authority, powers, and duties as are conferred upon the department by law, the following moneys shall be deposited in the *water development earmarked account created by [section 5]*:

(1) all sums of money donated or contributed by the federal government or any department or agencies thereof;

(2) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(3) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement thereof as provided by law;

(4) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(5) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities, or towns or their proportion of the cost thereof or from any other sources;

(6) except as otherwise provided by law, all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(7) except as otherwise provided by law, all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project."

Section 47. Section 90-2-101, MCA, is amended to read:

"90-2-101. Policy and purpose. (1) In the development of the natural resources of the state, it is essential to distinguish between those which are and those which are not renewable; to make proper charges through taxation and otherwise for the depreciation of nonrenewable resources; and to invest a proper proportion of the tax and other revenues from nonrenewable resources in the replacement thereof with developments of renewable natural resources that will preserve for the citizens the benefit of the state's natural heritage and to ensure that the quality of

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existing public resources such as land, air, fish, wildlife, and recreational opportunities are not significantly diminished by developments supported by this part.

(2) In order to finance such developments, it is necessary to borrow in anticipation of the receipt of the revenues so that replacement will not lag behind consumption. The purpose of this part is to provide a procedure for borrowing in the most economical way for this purpose, to authorize the creation of debt to finance the first stage of the program, and to describe the types of projects, loans, and grants to be included in the program."

Section 48. Section 90-2-111, MCA, is amended to read:

"90-2-111. Grants to divisions of state government. (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this part be made to any department, agency, board, commission, or other division of state government.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the 20th day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development, or preservation of the land, fish, wildlife, recreational, and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section."

Section 49. Section 90-2-124, MCA, is amended to read:

"90-2-124. Appropriation of coal severance tax. The state pledges and appropriates and directs to be credited to the sinking fund account, as received, *1 ¼%* of all money from time to time received from the collection of the severance tax and remaining after allocation of such tax to the trust fund established under section 5, Article IX, of the Montana constitution and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in 90-2-123(2), provided that no more than *1 ¼%* of such tax collections shall be deemed to be pledged for the purpose of 90-2-121(3)."

Section 50. **Codification instruction.** Sections 1, 2, and 4 through 23 are intended to be codified as an integral part of Title 85, chapter 1, and

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the provisions of Title 85, chapter 1, apply to sections 1, 2, and 4 through 23.

Section 51. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 52. **Repealer.** Sections 85-1-333 and 85-1-334, MCA, are repealed.

Section 53. **Coordination instruction.** (1) The bonds authorized under [section 29] may not be issued unless:

(a) HB 851 is passed and approved by a three-fourths vote of each house of the legislature; or

(b) another bill authorizing the debts and appropriating the funds pledged for their repayment is passed and approved by a three-fourths vote of each house of the legislature.

(2) In addition to the requirements of subsection (1), the legislature must specifically approve each project or activity before the bonds to finance that project or activity may be issued.

(3) The bonds authorized under [section 18] may not be issued unless a bill authorizing the debt created by the sale of the bonds and appropriating the funds pledged for their repayment is passed and approved by two-thirds vote of each house of the legislature.

Section 54. **Effective date.** This act, except for sections 4, 43, and 49, is effective July 1, 1981. Sections 4, 43, and 49 are effective July 1, 1983.

Approved April 23, 1981.

CHAPTER NO. 506

AN ACT TO ESTABLISH A REENLISTMENT OR EXTENSION INCENTIVE BONUS FOR ENLISTED MEMBERS OF THE MONTANA NATIONAL GUARD AND TO APPROPRIATE MONEY FOR THAT PURPOSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana National Guard Reenlistment or Extension Act of 1981".

Section 2. **Purpose.** [This act] is intended to encourage a greater number of extensions and reenlistments in the Montana national guard, which is the state's only source of organized manpower in times of emergency.

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Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Bonus" means the extension or reenlistment incentive bonus provided by [this act].

(2) "Member" means any enlisted member of the Montana army or air national guard.

(3) "Extension" means the continuation of active national guard service with the Montana national guard.

(4) "Reenlistment" means a second or subsequent voluntary enrollment in the Montana national guard.

(5) "Secretary" means a designee of the department of military affairs.

Section 4. **Bonus.** A member is entitled to receive a bonus payment for each year of service for which he extends or reenlists. The bonus shall be paid to each eligible member within 60 days following the successful completion of a year of service for which he extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose.

Section 5. **Eligibility.** The bonus must be granted to a person who:

(1) extends his original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by [this act]; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid.

Section 6. **Administration.** (1) The secretary shall administer [this act]. He shall maintain records and make rules necessary for its administration.

(2) He shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility.

Section 7. **Appropriation.** The following money is appropriated from the general fund to the department of military affairs for the purpose of

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providing extension and reenlistment bonuses for eligible members of the Montana national guard:

Fiscal year ending June 30, 1982	$7,000
Fiscal year ending June 30, 1983	$14,000

Approved April 23, 1981.

CHAPTER NO. 507

AN ACT AUTHORIZING THE ISSUANCE OF AND CREATING A STATE DEBT FOR WATER DEVELOPMENT BONDS IN AN AMOUNT NOT TO EXCEED $5 MILLION; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization of water development bonds.** The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $5 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development clearance fund account for loans as provided in the water development program.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to section 1.

Section 3. **Contingent effective date.** This act is effective if, and only if, Senate Bill No. 409 is passed and approved.

Approved April 23, 1981.

CHAPTER NO. 508

AN ACT TO REQUIRE THAT INSURERS AND HEALTH SERVICE CORPORATIONS TRANSACTING HEALTH INSURANCE IN THIS STATE OFFER AN OPTION FOR HOME HEALTH CARE UNDER HOSPITAL AND MEDICAL SERVICES POLICIES AND CONTRACTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition of home health care.** "Home health care" means services provided by a licensed home health agency to an insured in his place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

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(1) nursing;

(2) home health aide services;

(3) physical therapy;

(4) occupational therapy;

(5) speech therapy;

(6) hospice service;

(7) medical supplies and equipment suitable for use in the home; and

(8) medically necessary personal hygiene, grooming, and dietary assistance.

Section 2. **Availability of coverage for home health care.** Insurers and health services corporations transacting health insurance business in this state must make available, under group insurance policies and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy or contract may select any level of benefits as may be offered by the insurer or service plan corporation.

Section 3. **Applicability.** [This act] applies to policies or contracts delivered or issued for delivery in this state after [120 days after the effective date of this act] but does not apply to blanket, short term travel, accident only, limited or specified disease, or individual conversion policies or contracts, or to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under federal governmental plans.

Section 4. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to this act.

Approved April 24, 1981.

CHAPTER NO. 509

AN ACT TO AMEND SECTION 20-5-403, MCA, OF THE SCHOOL IMMUNIZATION LAWS TO ELIMINATE THE EXEMPTION BASED ON FAILURE TO ACT; ALLOWING A GRACE PERIOD FOR TRANSFER STUDENTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-403, MCA, is amended to read:

"20-5-403. Immunization required — grace period for transfers. (1) A governing authority may not enroll any person as a pupil in any school unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, and measles (rubeola) in the manner and with immunizing

agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional enrollment;

(c) files for an exemption; *or*

(d) is a pupil transferring from another school district in which case the provisions of subsection (2) apply.

(2) A person who transfers from one school district to another has 30 calendar days after commencement of attendance at the school to which he or she transfers to either complete immunization as specified in subsection (1)(a), commence immunization in the manner required by 20-5-404, or file for an exemption. If none of the foregoing actions is taken within 30 days, the transfer pupil is prohibited from further attendance until such action is taken."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Effective date.** This act is effective July 1, 1981.

Approved April 24, 1981.

CHAPTER NO. 510

AN ACT TO MAKE RAFFLE PRIZE RESTRICTIONS NONAPPLICABLE TO NONPROFIT CORPORATIONS, RELIGIOUS CORPORATIONS SOLE, AND OTHER NONPROFIT ORGANIZATIONS WHEN THE PROCEEDS OF A RAFFLE ARE USED FOR CHARITABLE PURPOSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exemption from restrictions — raffles.** (1) The restrictions of 23-5-413 do not apply to a raffle conducted by a nonprofit corporation, religious corporation sole, or other nonprofit organization when the corporation or organization is licensed by the board of county commissioners to conduct the raffle. A separate license shall be required for each raffle conducted.

(2) The organization or corporation seeking the license under subsection (1) must apply to the board of county commissioners for the license and must provide the following information:

(a) the cost and number of raffle tickets to be sold;

(b) the charitable purposes the proceeds of the raffle are intended to benefit; and

(c) the proposed prizes and their value.

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(3) The proceeds from the sale of the raffle tickets are to be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds may be used for the administrative cost of conducting the raffle.

(4) The corporation or organization conducting the raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle. The person or persons submitting the application to the board of county commissioners along with the corporation or organization conducting the raffle shall be responsible for submitting the accounting to the board of county commissioners.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 23, chapter 5, part 4, and the provisions of Title 23, chapter 5, part 4, apply to section 1.

Approved April 24, 1981.

CHAPTER NO. 511

AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-302, 41-3-401, AND 53-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing *of all children's foster family homes, group homes, child-care agencies and child-placing agencies*;

(iii) the care of dependent *and* neglected children in *substitute care placement and* children *who are free* for adoption; *and*

(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal pnysical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual

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purposes *or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625*;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future *or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or*

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement

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of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, *operator or employee of any registered or* licensed day-care *or substitute care facility*, or any other *operator or employee of a* child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

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Section 4. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 5. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

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(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) *termination of the parent-child legal relationship*;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services."

Approved April 24, 1981.

CHAPTER NO. 512

AN ACT TO REMOVE THE RESTRICTIONS ON ALL-BEVERAGES LIQUOR LICENSES TRANSFERRED FROM ONE QUOTA AREA TO ANOTHER 5 YEARS AFTER THE TRANSFER AND TO ALLOW THE TRANSFERS OF ALL-BEVERAGES LICENSES TO QUOTA AREAS THAT ARE LESS THAN 133 PERCENT OVER QUOTA, AN INCREASE FROM 125 PERCENT; AMENDING SECTIONS 16-4-202 AND 16-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any

interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 33% in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

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(b) *For 5 years after the transfer of a* license between quota areas under *subsection (6)(a), the license* may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons *for 5 years following the transfer.* For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(c) Once a license is transferred to a new quota area under subsection (6)(a), it may not be transferred to another quota area or back to the original quota area.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Section 2. Section 16-4-202, MCA, is amended to read:

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"16-4-202. Resort licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in [this act], the department may issue resort retail liquor licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

(3) The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules to be first promulgated on or before December 31, 1975.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of resort retail liquor license, must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) of this section. The word control shall mean lands held under lease, option, or permit.

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries, designating the ownership of the lands within the resort area, which plat must be verified by the resort developer or landowner and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings and other improvements to be built in said area in which resort retail liquor licenses are to or may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice thereof, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted, and the decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

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(9) Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail liquor license shall not be subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207."

Approved April 24, 1981.

CHAPTER NO. 513

AN ACT TO REMOVE THE OBLIGATIONS OF THE COUNTIES AND POLITICAL PARTIES TO PAY EXPENSES FOR COUNTY AND STATE CONVENTIONS; REPEALING SECTION 13-38-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-38-102, MCA, is repealed.

Approved April 24, 1981.

CHAPTER NO. 514

AN ACT TO SET A STATUTORY STATE EXPENDITURE LIMITATION; AND TO PERMIT EMERGENCY APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Montana total personal income" means the current income from all sources received during a particular period of time by persons residing within Montana as determined by the United States department of commerce or its successor agency.

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(2) "State expenditures" means the general fund appropriations, the earmarked fund appropriations, and the cash portion of the appropriations in the bond proceeds and insurance clearance fund, excluding:

(a) money received from the federal government;

(b) payments of principal and interest on bonded indebtedness;

(c) money paid for unemployment or disability insurance benefits;

(d) money received from the sale of goods or services provided that the purchase of the goods or services is discretionary;

(e) money paid from permanent endowments, constitutional trusts, or pension funds;

(f) proceeds of gifts or bequests made for purposes specified by the donor;

(g) money appropriated for tax relief; and

(h) funds transferred within state government or used to purchase goods for resale.

Section 2. **Expenditure limitation — exception.** (1) Except as provided in subsection (2), the state expenditures for a biennium may not exceed the state expenditures for the preceding biennium plus the product of the state expenditures for the preceding biennium and the growth percentage. The growth percentage is the percentage difference between the average Montana total personal income for the 3 calendar years immediately preceding the next biennium and the average Montana total personal income for the 3 calendar years immediately preceding the current biennium.

(2) The legislature may appropriate funds in excess of this limit from the reserve account if:

(a) the governor declares that an emergency exists; and

(b) two-thirds of the members of each house approve a bill stating the amount to be spent in excess of the expenditures limitation established in subsection (1), the source of the excess revenue to be spent, and an intention to exceed the limitation.

(3) Expenditures may exceed the expenditures limitation only for the year or years for which an emergency has been declared.

(4) The legislature is not required to appropriate the full amount allowed in any year under subsection (1).

Approved April 24, 1981.

CHAPTER NO. 515

AN ACT AMENDING SECTION 71-3-513, MCA, TO REQUIRE NOTIFICATION TO THE OWNER OF PROPERTY SUBJECTED TO A MECHANIC'S LIEN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-513, MCA, is amended to read:

"71-3-513. Filing with county clerk — notification of owner. *(1)* The county clerk must endorse upon every lien the day of its filing and make an abstract thereof in a book by him to be kept for that purpose and

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properly indexed, containing the date of the filing, the name of the person holding the lien, the amount thereof, the name of the person against whose property the lien is filed, and the description of the property to be charged with same.

(2) The clerk shall not file the lien unless there is attached thereto a certification by the lien claimant or his agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service shall be made by personal service on each owner or by mailing a copy of the lien by certified or registered mail with return receipt requested to each owner's last known address. The certification shall state whether service was made by delivery of certified or registered mail."

Approved April 24, 1981.

CHAPTER NO. 516

AN ACT TO INCREASE THE STANDARD DEDUCTION ALLOWED FOR INCOME TAX PURPOSES; AMENDING SECTION 4 OF INITIATIVE NO. 86; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4 of Initiative No. 86 is amended to read:

"Section 4. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. *(1)* In the case of a resident individual, a standard deduction equal to *20%* of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be *$1,500, as adjusted under the provisions of subsection (2)*, except in the case of a single joint return of husband and wife the maximum standard deduction shall be *$3,000, as adjusted under the provisions of subsection (2)*. The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.""

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1980.

Approved April 24, 1981.

CHAPTER NO. 517

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE

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MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE SHALL MEET IN ANNUAL SESSIONS FOR 60 LEGISLATIVE DAYS IN ODD-NUMBERED YEARS AND 45 LEGISLATIVE DAYS IN EVEN-NUMBERED YEARS AND TO PROVIDE LIMITATIONS ON THE BUSINESS THAT MAY BE CONDUCTED IN EACH RESPECTIVE SESSION; AND TO PROVIDE AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article V, section 6, of the Montana constitution is amended to read:

"Section 6. **Sessions.** The legislature shall *be a continuous body for 2-year periods beginning when the newly elected members take office as may be determined by the legislature. The legislature shall meet once a year in a regular session of not more than 60 legislative days in odd-numbered years and of not more than 45 legislative days in even-numbered years. The regular session in odd-numbered years shall be limited to consideration of legislation not relating to appropriations, except that legislation relating to appropriations may be considered if approved for introduction by a two-thirds vote of the members of either house. The regular session in even-numbered years shall be limited to consideration of legislation relating to revenue and appropriations, except that legislation not relating to revenue or appropriations may be considered if approved for introduction by a two-thirds vote of the members of either house.* Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members."

Section 2. **Effective date.** If approved by the electorate, this amendment shall be effective January 1, 1984.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held in November 1982, by printing on the ballot the full title of this act and the following:

☐ FOR annual legislative sessions.

☐ AGAINST annual legislative sessions.

CHAPTER NO. 518

AN ACT AMENDING SECTIONS 7-4-2107, 7-4-2501, 7-4-2503, AND 7-4-2504, MCA, ESTABLISHING SALARIES FOR ELECTED COUNTY OFFICIALS AND PROVIDING FOR ANNUAL COST-OF-LIVING ADJUSTMENTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the

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district court, *part-time* county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, *for the fiscal year beginning July 1, 1981,* is computed by adding the *annual base salary of:*

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon *subsection (1),* the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon *subsection (1),* the sum of $2,000 per year.

(c) *In counties with a population less than 30,000, the county attorney who is a part-time official shall receive, in addition to the salary based upon subsection (1), the sum of $1,200 per year.* In each county with a population in excess of 30,000, the county attorney *shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981,* shall be *$36,500.*

(d) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney *for the fiscal year beginning July 1, 1981,* shall be *$36,500. Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year, shall be added to all cost-of-living increments granted for previous years.*

(e) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 7-4-2107, MCA, is amended to read:

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"7-4-2107. Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary *equal* to the annual salary established in 7-4-2503 for the clerk and recorder *plus $2,000.*

(2) Each member of the board in all other counties is entitled to a salary *of not more than $50 for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board.*

(3) This section does not apply to counties that have adopted *a* charter form of government."

Section 3. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. (1) The county governing body shall by resolution, on or before July 1, *1982, and on or before July 1 of each year thereafter adjust and uniformly* fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); *and* the county surveyor (if he receives a salary) *for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.*

(2) *If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.*

(3) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 4. Section 7-4-2501, MCA, is amended to read:

"7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries."

Section 5. **Effective date.** This act is effective July 1, 1981.

Approved April 29, 1981.

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CHAPTER NO. 519

AN ACT TO REVISE THE DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND AMENDING SECTIONS 16-1-106, 16-4-105, 16-4-201, AND 16-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

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(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Public road or highway" means the same as in 15-70-301(5).

(16) "Rules" means rules published by the department pursuant to this code.

(17) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(18) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(19) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(20) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(21) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(22) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities

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and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured *over the shortest public road or highway* from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

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(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 3. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that

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may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. Notwithstanding the preceding sentence, the total population for determining the quota of a city may include with the city's population the population residing outside but within 5 miles of the city limits in a case where the number of persons residing outside but within 5 miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by the department or its agent at the expense of the applicant for a license under this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured *over the shortest public road or highway* from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 4. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

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(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer is sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $400;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured *over the shortest public road or highway* from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured *over the shortest public road or highway* from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured *over the shortest public road or highway* from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $800;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured *over the shortest public road or highway* from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

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(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee of $800.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages."

Section 5. **Determination of mileage distances.** When the mileage distance established under the provisions of this part is a matter of controversy and is an issue before the department of revenue, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the department and of a license holder or license applicant shall be present when the distance is measured.

(3) The route traversed for the measurement shall be the shortest public road or highway that is reasonably passable during the entire year. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

Section 6. **Effect on licenses.** (1) With respect to any retail beer or all-beverage license for on-premise consumption, that has been issued prior to the effective date of this act, the provisions of (sections 2 through 5) do not affect:

(a) the validity of the license or its reissuance for the same premise or;

(b) the status of the license as a city or county license so long as the premise is not relocated.

(2) With respect to any retail beer or all-beverage license for on-premise consumption, issued on or after the effective date of this act, the validity of the license or any reissuance of the license shall not be affected by the construction of a public road or highway occurring after the date the license is originally issued.

Section 7. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 16, part 4, and the provisions of Title 16, part 4, apply to section 5.

Approved April 29, 1981.

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CHAPTER NO. 520

AN ACT TO CLARIFY THE STATUTES ALLOWING THE INVESTMENT CREDIT; AND TO INCREASE THE SMALL BUSINESS INVESTMENT CREDIT TO 30 PERCENT OF THE FEDERAL CREDIT; AMENDING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose and definition. The purpose of 15-30-162 is to allow individuals, estates, *and* trusts, *including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202,* to take *the* investment credit as provided for in 15-30-162 *in order* to stimulate capital investment by the small business sector."

Section 2. Section 15-30-162, MCA, is amended to read:

"15-30-162. Investment credit. (1) There is allowed as a credit against the taxes imposed by 15-30-103 and 15-30-104 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(2) The amount of the credit allowed for the taxable year is the sum of:

(a) *30%* of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;

(b) the investment credit carryovers carried to the taxable year as provided in subsection (4); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (4).

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000. In the case of a husband and wife who file separate returns, the investment credit may not exceed $2,500 plus 50% of the tax liability in excess of $2,500 unless the spouse of the taxpayer has no qualified investment for and no unused credit carryback or carryover to the taxable year of the spouse that ends with or within the taxpayer's taxable year.

(4) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (3), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue

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Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 3. Section 15-31-123, MCA, is amended to read:

"15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that is eligible to elect to be taxed under the provisions of 15-31-202, whether or not such election is made.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(4) The amount of the credit allowed for the taxable year is the sum of:

(a) *30%* of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;

(b) the investment credit carryovers carried to the taxable year as provided in subsection (6); and

(c) the investment credit carrybacks carried to the taxable year as provided for in subsection (6).

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds $5,000, the investment credit may not exceed $5,000 plus 50% of the tax liability in excess of $5,000.

(6) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (5), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 4. **Applicability.** This act is applicable only to taxable years beginning after December 31, 1980, and before January 1, 1983.

Approved April 29, 1981.

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CHAPTER NO. 521

AN ACT TO ALLOW MUNICIPALITIES GREATER FLEXIBILITY IN ASSESSING THE COSTS OF INSTALLING AND MAINTAINING A LIGHTING SYSTEM TO THOSE WHO BENEFIT FROM A SPECIAL LIGHTING DISTRICT; AMENDING SECTIONS 7-12-4301, 7-12-4321, AND 7-12-4328, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4301, MCA, is amended to read:

"7-12-4301. Special improvement districts for lighting streets authorized. (1) The council of any city or town is authorized to:

(a) create special improvement districts embracing any street or streets or public highway therein or portions thereof and property adjacent thereto or property which may be declared by said council to be benefited by the improvement to be made for the purpose of lighting such street or streets or public highway;

(b) require *that all or any portion of* the cost of installing and maintaining such lighting system be paid by the owners of the property embraced within the boundaries of such districts; and

(c) assess and collect such portion of such cost by special assessment against said property.

(2) The governing body may create special lighting districts on any street or streets or public highway for the purpose of lighting them and assess the costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property."

Section 2. Section 7-12-4321, MCA, is amended to read:

"7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, *all or any portion* as shall be determined by the city or town council, shall be borne by the property embraced within said district."

Section 3. Section 7-12-4328, MCA, is amended to read:

"7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with *all or any portion* of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

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(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk."

Approved April 29, 1981.

CHAPTER NO. 522

AN ACT TO ADOPT THE REVISED UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS 35-12-101 THROUGH 35-12-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Uniform Limited Partnership Act".

Section 2. **Construction and application.** [This act] must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

Section 3. **Rules for cases not provided for in [this act].** In any case not provided for in [this act], the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

Section 4. **Definitions.** In [this act], the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in [section 11], as that certificate is amended from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in [section 26].

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

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(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in [section 42].

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Section 5. **Name.** The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" in full;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and

(4) may not be the same as or deceptively similar to the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

Section 6. **Reservation of name.** (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under [this act] and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

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(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Section 7. **Specified office and agent.** Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by [section 8]; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

Section 8. **Records to be kept.** (1) Each limited partnership shall keep at the office referred to in [section 7(1)] the following:

(a) a current list of the full name and last-known business address of each partner, set forth in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; and

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years.

(2) These records must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

Section 9. **Nature of business.** A limited partnership may carry on any business that a partnership without limited partners may carry on.

Section 10. **Business transactions of partner with the partnership.** Except as otherwise provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto as a person who is not a partner.

Section 11. **Certificate of limited partnership.** (1) Two or more persons desiring to form a limited partnership shall execute a certificate

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of limited partnership. The certificate must be filed in the office of the secretary of state and shall set forth:

(a) the name of the limited partnership;

(b) the general character of its business;

(c) the address of the office and the name and address of the agent for service of process required to be maintained by [section 7];

(d) the name and the business address of each partner (specifying the general partners and limited partners separately);

(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;

(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;

(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;

(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;

(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;

(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

(m) any other matters the partners, in their sole discretion, determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

Section 12. **Amendments to certificate.** (1) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

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(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;

(b) the admission of a new partner;

(c) the withdrawal of a partner; or

(d) the continuation of the business under [section 47(3)] after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement therein was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, but amendments to show changes of addresses of limited partners need be filed only once every 12 months.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person is liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) of this section if the amendment is filed within the 30-day period specified in subsection (2).

Section 13. **Cancellation of certificate.** A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of the certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate may determine.

Section 14. **Execution of certificates.** (1) Each certificate required by [sections 11 through 19] to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by each partner named therein.

(b) Each certificate of amendment must be signed by at least one general partner and by each other partner who is designated in the certificate

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as a new partner or whose contribution is described as having been increased.

(c) Each certificate of cancellation must be signed by each general partner.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission or increased contribution of a partner must specifically describe the admission or increase.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Section 15. **Amendment or cancellation by judicial act.** If the persons required by [section 14] to execute any certificate of amendment or cancellation fail or refuse to do so, any other partner and any assignee of a partnership interest who is adversely affected by the failure or refusal may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

Section 16. **Filing in the office of the secretary of state.** (1) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on each duplicate original the word "filed" and the day, month, and year of the filing thereof;

(b) file one duplicate original in his office; and

(c) return the other duplicate original to the person who filed it or his representative.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein; and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled.

Section 17. **Liability for false statement in certificate.** If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on his behalf who knew and any general partner who knew or

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should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under [section 15].

Section 18. **Constructive notice.** The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated therein as limited partners are limited partners but is not constructive notice of any other fact.

Section 19. **Delivery of certificates to limited partners.** Upon the return by the secretary of state pursuant to [section 16] of any certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate to each limited partner unless the partnership agreement provides otherwise.

Section 20. **Admission of additional limited partners.** (1) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as a new limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in [section 45], to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

Section 21. **Voting.** Subject to the provisions of [section 22], the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or any other basis) upon any matter.

Section 22. **Liability to third parties.** (1) Except as provided in subsection (4), a limited partner as such is not liable for the obligations of a limited partnership unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

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(a) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership;

(d) approving or disapproving an amendment to the partnership agreement; and

(e) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by [sections 5(2)(a) and 5(2)(b)], is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Section 23. **Person erroneously believing himself a limited partner.** (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate if any is filed to show the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under [section 12],

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but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

Section 24. **Right to information.** Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by [section 8] to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable.

Section 25. **Admission.** After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted only with the specific written consent of each partner.

Section 26. **When person ceases to be general partner of limited partnership.** Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in [section 35];

(2) the general partner ceases to be a member of the limited partnership as provided in [section 43];

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

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(5) unless otherwise provided in the certificate of limited partnership, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without his consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) his death; or

(b) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property;

(7) in the case of a general partner who is acting as such in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership.

Section 27. **General powers and liabilities.** Except as otherwise provided in [this act] and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners.

Section 28. **Contributions by a general partner.** A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent he is participating in the partnership as a limited partner.

Section 29. **Voting.** The partnership agreement may grant to all or a specified group of general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

Section 30. **Form of contributions.** The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

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Section 31. **Liability for contributions.** (1) Except as otherwise provided in the certificate of limited partnership, a partner is liable to the limited partnership for any promise to contribute cash or property or to perform services regardless of whether he is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of [this act] may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or whose claim arises after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the precompromise obligation.

Section 32. **Allocation of profits and losses.** The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

Section 33. **Allocation of distributions.** Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

Section 34. **Interim distributions.** Except as otherwise provided in [sections 34 through 41], a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or on the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under [section 41(3)], to the extent and at the time or on the happening of the events specified in the certificate of limited partnership.

Section 35. **Withdrawal of general partner.** A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

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Section 36. **Withdrawal of limited partner.** A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in the certificate of limited partnership and in accordance with any procedures provided in the partnership agreement. If the certificate of limited partnership does not specify the time or the events on the happening of which a limited partner may withdraw from the limited partnership or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw from the limited partnership upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

Section 37. **Distributions upon withdrawal.** Except as provided in [sections 34 through 41], upon withdrawal any withdrawing partner is entitled to receive any distributions to which he is entitled under the partnership agreement and, if not provided, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal, based upon his right to share in distributions from the limited partnership.

Section 38. **Distributions in kind.** Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

Section 39. **Right to distributions.** At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution.

Section 40. **Limitations on distributions.** A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership's assets.

Section 41. **Liability upon return of contributions.** (1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or [this act], for a period of 1 year thereafter he is liable to the limited partnership for the amount of his contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or [this act], for a period of 6 years thereafter he is liable to the limited partnership for the amount of the contribution wrongfully returned.

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(3) A partner has received a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contributions which have not theretofore been distributed to him.

Section 42. **Nature of partnership interest.** A partnership interest is a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets. A partnership interest is personal property.

Section 43. **Assignment of partnership interest.** Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights thereof. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

Section 44. **Rights of creditors.** On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest thereon. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. [This act] does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

Section 45. **Right of assignee to become limited partner.** (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and [this act]. An assignee who becomes a limited partner is also liable for the obligations of his assignor to make and return contributions as provided in [sections 34 through 41], but the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under [sections 17 and 31].

Section 46. **Power of estate of deceased or incompetent partner.** If a partner who is a natural person dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's personal representative, guardian, conservator, or

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other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.

Section 47. **Nonjudicial dissolution.** A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in the certificate of limited partnership;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and he does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with [section 48].

Section 48. **Dissolution by decree of court.** On application by or for a partner, the district court may decree a dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Section 49. **Winding up.** Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; but any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the district court.

Section 50. **Distribution of assets.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to [section 34 or 37];

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to [section 34 or 37]; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second respecting their partnership interests, in the proportions in which the partners share in distributions.

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Section 51. **Law governing.** Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Section 52. **Registration.** Before transacting business in this state, a foreign limited partnership must register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state in duplicate an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subsection (4) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

Section 53. **Issuance of registration.** (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office one of the duplicate originals of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with one duplicate original of the application, must be returned to the person who filed the application or his representative.

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Section 54. **Name.** A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" and that could be registered by a domestic limited partnership.

Section 55. **Changes and amendments.** If any statement in a foreign limited partnership's application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

Section 56. **Cancellation of registration.** A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation, signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transaction of business in this state.

Section 57. **Transaction of business without registration.** (1) A foreign limited partnership transacting business in this state without registration may not maintain any action, suit, or proceeding in any court of this state until it has registered.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership and does not prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's transacting business in this state without registration.

(4) A foreign limited partnership, by transacting business in this state without registration appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

Section 58. **Action by attorney general.** The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of [sections 51 through 58].

Section 59. **Right of action.** A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

Section 60. **Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

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Section 61. **Pleading.** In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort.

Section 62. **Expenses.** If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the limited partnership for the remainder of the proceeds so received by him.

Section 63. **Saving clause.** (1) This act does not impair the obligation of any contract existing on [the effective date of this act] or affect any rights accrued, duties incurred, or proceedings begun before [the effective date of this act].

(2) A limited partnership formed under any statute of this state before [the effective date of this act] may elect to be governed by [this act]. The general partner or partners may make the election for the limited partnership at any time on or after [the effective date of this act] by complying with [section 11] of [this act], except that the limited partners shall not be required to execute a new certificate of limited partnership. Notwithstanding such election by the general partner or partners:

(a) [sections 30, 31, and 41] apply only to contributions and distributions made after the date of the election;

(b) [section 45] applies only to assignments made after the date of the election; and

(c) [section 50] does not change the priority of creditors for transactions entered into before the date of the election.

(3) A limited partnership formed under any statute of this state before [the effective date of this act], until or unless it elects to be governed by [this act], shall be governed by 35-12-101 through 35-12-403, or other applicable prior law.

Section 64. **Repealer.** Sections 35-12-101 through 35-12-403, MCA, are repealed.

Section 65. **Secretary of state authorized and required to establish fees commensurate with costs.** The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.

Approved April 29, 1981.

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CHAPTER NO. 523

AN ACT TO PROVIDE FOR CONTRIBUTION FROM JOINT TORTFEASORS AND PROVIDING FOR JOINDER OF PARTIES; AMENDING SECTION 27-1-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly and severally liable — right of contribution. (1) Whenever the negligence of *any party* in any action is an issue, each party *against whom recovery may be allowed* is jointly and severally liable for the amount *that may be* awarded to the claimant but has the right of contribution from any other *person whose negligence may have contributed as a proximate cause to the injury complained of.*

(2) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall apportion the degree of fault among such persons. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed. *Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.*

(3) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party."

Section 2. **Applicability.** This act shall apply only to causes of action arising after the effective date of this act.

Approved April 29, 1981.

CHAPTER NO. 524

AN ACT TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SUSPEND ACTION ON APPLICATIONS AND TO CLOSE A SOURCE WITHIN THE MILK RIVER BASIN TO APPLICATIONS FOR A PERMIT TO APPROPRIATE WATER IN THE BASIN UNDER CERTAIN CONDITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Milk River Basin — suspension of action on permits — proposal.** (1) In order to balance the need for the continued development of Montana's water and for protection of existing rights in the Milk

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River Basin, the department may suspend action on a class of applications or may close a source in the basin and refuse to accept a class of applications, or both, for a permit under this part to appropriate from that source in the basin.

(2) Suspension or closure, or both, may only be proposed by the department.

(3) The proposal must state the source in the basin and class of applications for which suspension or closure, or both, is being proposed and any of the following allegations:

(a) that the frequency of occurrence of unappropriated waters is such that:

(i) any new appropriation from the source for the class of applications will adversely affect the rights of a prior appropriation from the source; or

(ii) any new appropriation from the source for the class of applications will interfere unreasonably with another planned use or development for which a permit has been given or for which water has been reserved in the source; or

(b) that significant disputes or enforcement problems regarding priority of rights or amounts or duration of water in use by appropriators are in progress or will arise.

Section 2. **Hearing — order.** (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by [section 1] to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under this section and [section 1]. If the order suspends action on pending applications, the department shall notify the applicant that action on his application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant,

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deny, or condition the applications under 85-2-306(2), 85-2-310, and 85-2-311 or continue the suspension under this section.

Section 3. **Request to modify suspension — order.** (1) A person or public agency may request that an order be modified or revoked. The request must contain allegations supported by substantial evidence showing that the criteria in 85-2-311 can be met for an application or a class of applications from the source. If not so supported, the department may reject the request without a hearing.

(2) The department may by order after a hearing modify or revoke any order made as provided in [sections 1 and 2] upon such notice and in such manner as is reasonable under the circumstances.

Section 4. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, apply to sections 1 through 3.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 525

AN ACT ALLOWING FOR THE DEDUCTION OF FEDERAL EXCISE TAXES WHEN COMPUTING OIL AND GAS NET PROCEEDS TAX; DEFINING THE TERM EXCISE TAX; AMENDING SECTIONS 15-23-601, 15-23-602, 15-23-603, AND 15-23-605, MCA; AND PROVIDING FOR EFFECTIVE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-601, MCA, is amended to read:

"15-23-601. Definitions. *As used in this part, the following definitions apply:*

(1) *"Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.*

(2) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(3) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 2. Section 15-23-602, MCA, is amended to read:

"15-23-602. Statement of yield. Each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before March

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31 in each year make out and deliver to the department of revenue a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year and the value thereof. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the well;

(3) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil extracted or produced from the well during the period covered by the statement;

(4) the gross yield or value in dollars and cents;

(5) actual cost of extracting product from well;

(6) cost of construction, repairs, and betterments;

(7) actual cost of fire insurance and workers' compensation insurance;

(8) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the United States government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil reported pursuant to subsection (3), including a separate statement of the amount of such taxes paid or withheld from each royalty owner."

Section 3. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross product yielded from such well and its gross value for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the value of the gross products thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the operator or producer;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

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(e) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the United States government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) The value arrived at under subsection (1) shall be increased by the amount of any refund received from the United States government to the extent that the amount refunded was used to reduce the value of the gross products under subsection (1)(e).

(3) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof."

Section 4. Section 15-23-605, MCA, is amended to read:

"15-23-605. Assessment of royalties. *(1)* The amount of royalty received, *less the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8),* shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

(2) The net proceeds to a recipient shall be increased by any refund of an excise tax to the extent that the amount refunded was used to reduce the value of the royalty received under subsection (1)."

Section 5. **Applicability.** This act applies to the taxable years beginning after December 31, 1979.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 526

AN ACT TO ALLOW TAXPAYERS TO CHALLENGE ASSESSMENT RULES AND PROCEDURES IN THE DISTRICT COURT; PROVIDING THAT RELIEF GRANTED IN SUCH A PROCEEDING MAY APPLY TO ALL SIMILARLY SITUATED TAXPAYERS; AMENDING SECTION 15-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Challenge to assessment rules or procedures.** An aggrieved taxpayer may, in lieu of proceeding under Title 15, chapter 15, part 1, bring a declaratory judgment action in the district court seeking a

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declaration that a method or procedure of assessment of property adopted or utilized by the department of revenue is illegal or improper.

Section 2. **Procedure.** (1) Except as provided in subsection (2), an action pursuant to [section 1] is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under [section 1] may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under [section 1] may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to [section 1] if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) of this section does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under [section 1] all issues shall be tried by the court.

Section 3. **Remedy.** (1) If the district court determines that the challenged rule or procedure is improper it may direct:

(a) that the assessment be changed for the taxpayer or taxpayers who brought the action as well as all similarly situated taxpayers; or

(b) such other remedy as the court considers appropriate.

(2) The remedy directed by the district court may apply only to taxes imposed during or after the year the rule or procedure is challenged. The remedy may not apply to the application or implementation of the rule or procedure as it applies to taxes imposed in years prior to the challenge under [section 1].

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Section 4. **Tax to be paid.** A tax which is based on the rule or procedure being challenged under [section 1] and which becomes due before the final determination of the validity of the rule or procedure must be paid when due as a condition of continuing the action.

Section 5. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $25 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure shall apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in [sections 1 through 4]."

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

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CHAPTER NO. 527

AN ACT TO REVISE AND CLARIFY THE LAWS RELATING TO SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-4188, 7-12-4202, 7-12-4203, 15-16-102, AND 15-16-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4188, MCA, is amended to read:

"7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable on or before 5 p.m. on November 30 of each year except as provided in subsection (2).

(2) The governing body of a municipality may provide by resolution that one-half of the payment on special assessments, or installments of special assessments may be deferred to no later than 5 p.m. on May 31 of the following year.

(3) In the event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as delinquent *property* taxes *under 15-16-102.*"

Section 2. Section 7-12-4202, MCA, is amended to read:

"7-12-4202. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or (Bond No. ....)	Dollars $.....

Interest at the rate of ....% per annum, payable *annually (or* semiannually*)*.

Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the city of ...., Montana

The treasurer of the city of ...., Montana, will pay to bearer the sum of .... dollars as authorized by resolution No. .... as passed on the .... day of ...., 19.., creating special improvement district No. .... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ...., Montana.

This warrant (or bond) bears interest at the rate of ....% per annum from the day of registration of this warrant (or bond), as expressed herein,

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until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable *annually (or* semiannually*)* on the first day of .... in each year *(*and on the first day of .... in each year*)*, *commencing .... 1, 19..,* unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ...., Montana, relating to the issuance thereof.

(SEAL)

Dated at ...., Montana, this .... day of ...., 19...
City of ...., Montana

By: .....
Mayor

.....
City Clerk

Registered at the office of the city treasurer of ...., Montana, this .... day of ...., 19...

.....
City Treasurer"

Section 3. Section 7-12-4203, MCA, is amended to read:

"7-12-4203. Details relating to special improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable *annually or* semiannually, *at the discretion of the governing body of the municipality, on such dates as the governing body prescribes.* Such warrants (or bonds) shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk.

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(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years."

Section 4. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, except *assessments made for special improvements in cities and towns payable under 15-16-103,* shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of ⅔ of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of ⅔ of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty."

Section 5. Section 15-16-103, MCA, is amended to read:

"15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements. *(1)* Special assessments or installments of special assessments made for special improvements in towns and cities, *the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been* duly and regularly made and levied by resolution according to law, shall be payable *as follows:*

(a) one-half of such taxes shall be payable on or before 5 p.m. on November 30 of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for nonpayment as delinquent *property* taxes *under 15-16-102.*

(b) one-half of such taxes shall be payable on or before 5 p.m. on May 31 of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102.

(2) The collection *of special assessments or installments of special assessments made for special improvements in towns and cities* shall be had and made as provided by 7-12-4181 as the same is now in force or may be hereafter amended."

Approved April 29, 1981.

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CHAPTER NO. 528

AN ACT TO PROVIDE COURT COSTS AND ATTORNEY'S FEES TO A SUCCESSFUL PLAINTIFF IN AN ACTION FOR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR VEHICLE; AMENDING SECTIONS 25-10-101 AND 25-10-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-10-101, MCA, is amended to read:

"25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in his favor in the following cases:

(1) in an action for the recovery of real property or damages thereto;

(2) in an action to recover the possession of personal property where the value of the property exceeds $50; such value shall be determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action which involves the title or possession or right of possession of real estate; or the legality of any tax, impost, assessment, toll, or municipal fine; or quo warranto proceedings;

(6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction*; or*

(7) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if he is entitled to attorney's fees under [section 3]."

Section 2. Section 25-10-302, MCA, is amended to read:

"25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, and 71-3-124, *and [section 3]* need not be included in the cost bill if they are made a part of the judgment."

Section 3. **Attorney's fees — motor vehicle claim.** In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the plaintiff in his last written offer to the defendant or his agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make any offer within 15 days of the date requested to do

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so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, shall be entitled to his reasonable attorney's fee under this provision.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 25, chapter 10, part 3, and the provisions of Title 25, chapter 10, apply to section 3.

Approved April 29, 1981.

CHAPTER NO. 529

AN ACT TO TRANSFER FORESTRY FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE DEPARTMENT OF STATE LANDS; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE TRANSFER; TO REQUEST THAT THE GOVERNOR MAKE RECOMMENDATIONS TO THE MEMBERS OF THE 1983 LEGISLATURE; AMENDING SECTIONS 75-10-203, 76-13-104, 76-13-106, 76-13-109, AND 80-8-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Functions of department of natural resources and conservation transferred to department of state lands.** (1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner.

Section 2. **Functions of board of natural resources and conservation transferred to board of land commissioners.** (1) The functions of the board of natural resources and conservation in Title 76, chapter 13, relating to protection of forest resources are transferred to the board of land commissioners.

(2) Unless inconsistent with this act, any reference in that chapter to "board of natural resources and conservation" is changed to "board of land commissioners".

(3) Any corresponding internal references shall be changed by the code commissioner.

Section 3. Section 75-10-203, MCA, is amended to read:

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"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

(5) "Hazardous waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.

(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(7) "Resource recovery" means the recovery of material or energy from solid waste.

(8) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(10) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws

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administered by the department of *state lands*, or marketable wood byproducts.

(11) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(12) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 4. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state."

Section 5. Section 76-13-106, MCA, is amended to read:

"76-13-106. Cooperation between department of state lands and county. The county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The county governing body shall list forest lands under *its* jurisdiction with the department for forest protection. The money the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties."

Section 6. Section 76-13-109, MCA, is amended to read:

"76-13-109. Rules — limitation on rulemaking authority. The board may adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2."

Section 7. Section 80-8-110, MCA, is amended to read:

"80-8-110. Cooperation with other agencies. (1) The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

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(2) The department of agriculture and the department of health and environmental sciences shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater affluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of *state lands*, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 8. **Recommendation for transfer of functions from the department of state lands, the board of land commissioners, and the department and board of health and environmental sciences to the department and board of natural resources and conservation.** The members of the 1981 legislature of Montana request that the governor of Montana submit recommendations to the members of the 1983 legislature concerning the transfers necessary in order to coordinate and facilitate the permitting process of those appropriate functions from the department of state lands and the board of land commissioners to the department of natural resources and conservation and from the department and board of health and environmental sciences to the department and board of natural resources and conservation.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Transition.** The provisions of 2-15-131 through 2-15-137 apply to the transfer of functions under this act.

Section 11. **Effective date.** This act is effective July 1, 1981.

Approved April 29, 1981.

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CHAPTER NO. 530

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS 40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113, 40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION 40-6-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Petition for relinquishment of custody of child.** (1) Any parent who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by petitioning the district court upon forms supplied by the court.

(2) The petition shall contain the following information:

(a) the name and age of both birth parents, if known;

(b) the name, if any, and the age of the child;

(c) the race and religion of both birth parents, if known; and

(d) why relinquishment is desired.

(3) Upon receipt of the petition, the court shall set the time for hearing the matter.

(4) The parent-child legal relationship may not be terminated by relinquishment proceedings unless both birth parents join in the petition unless the parent-child legal relationship of a parent not joining the petition has terminated.

Section 2. **Relinquishment hearing — requirements.** (1) The court may not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act.

(2) If the court finds after the hearing that it is in the best interests of the birth parents or child that no relinquishment be granted, the court shall enter an order dismissing the action.

(3) If the court is not satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act, it may continue the matter. The court may, after considering the best interests of the child, order the child to be placed in foster care while the matter is continued.

(4) If the court finds at the hearing that the relinquishing parent has been counseled as provided in subsection (1) of this section and that the relinquishment would best serve the interests of the birth parents and the child, it shall enter an order of relinquishment. The order shall contain language terminating the parent-child legal relationship.

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Section 3. **Order of relinquishment — custody.** (1) In the order of relinquishment terminating the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the racial, cultural, and religious background of the child, shall order legal custody transferred to:

(a) the department of social and rehabilitation services;

(b) a licensed child placement agency;

(c) a relative of the child;

(d) the person named in the notice filed by the parents pursuant to [section 11]; or

(e) any other person eligible to adopt if the court finds it is in the child's best interest.

(2) The order of relinquishment shall set forth all pertinent facts brought forth at the hearing and shall also state that the court is satisfied that the provisions of [section 2(1)] have been satisfied.

(3) The order of relinquishment divests the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished. The order shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

Section 4. Section 40-6-125, MCA, is amended to read:

"40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to *relinquish* the child for adoption and the *relinquishment* or consent of the *birth* father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may *deliver physical custody of her child to the department or a licensed child placing agency by filing* a petition pursuant to *[section 1]. Upon* petition, the court may enter an order authorizing temporary care of the child."

Section 5. Section 40-8-101, MCA, is amended to read:

"40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", *as amended.*"

Section 6. Section 40-8-103, MCA, is amended to read:

"40-8-103. Definitions. As used in this *chapter*, unless the context otherwise requires:

(1) "adoption" means the act of creating the legal relationship between parent and child when it did not exist genetically;

(2) "adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption;

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(3) "agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption;

(4) "birth parent" means the mother or father of genetic origin of a child, but does not include a putative father of a child;

(5) "child" means any person *under 18 years of age;*

(6) "court" means a Montana district court or a tribal court of any Montana Indian reservation;

(7) "department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22;

(8) "extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin;

(9) "parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated;

(10) "placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child;

(11) "relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an individual or agency pursuant to [sections 1 through 3]."

Section 7. Section 40-8-104, MCA, is amended to read:

"40-8-104. Who may be adopted. *(1)* Any *minor* may be adopted *if:*

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter."

Section 8. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of *assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children,* toward the child, *as provided in 45-5-625*;

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(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, *as defined in 41-3-102(3)(d)*;

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of social and rehabilitation services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of social and rehabilitation services or of an agency or witnessed by a representative of the court."

Section 9. Section 40-8-113, MCA, is amended to read:

"**40-8-113. Consent of child.** *If a child is* 12 years of age or over, *he must consent to his adoption. Consent must* be given in court or be in writing in such form as the court shall direct."

Section 10. **Who may place a child for adoption.** A child may be placed for adoption only by:

(1) the department;

(2) a licensed child placing agency; or

(3) the child's parents.

Section 11. **Placement for adoption by parents.** (1) No parent may make a placement of a child for adoption with a person who is not

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a stepparent or a member of the child's extended family unless the parent files a notice of parental placement with the district court for the county in which the prospective adoptive parent or the parent making the placement resides.

(2) The notice of parental placement shall be filed prior to a parent's placement of the child with a person who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in subsection (2)(a) through (2)(c).

(3) Upon receipt of a notice of parental placement, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days, but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the agency or person who conducted the investigation under subsection (3).

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose

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of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child.

Section 12. Section 40-8-121, MCA, is amended to read:

"40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

(4) Except as provided in [section 11], a petition for adoption must be filed within 1 year of the time the child was placed for adoption with the petitioner."

Section 13. Section 40-8-122, MCA, is amended to read:

"40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or *by a* licensed *child placing agency or other person named by the court. The* investigation *may be* waived *if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The* report of investigation shall be filed with the court by the investigator within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. *The report of the* investigation shall *state:*

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(a) whether *the child is legally free* for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of *the* investigation shall become a part of the files in the case and shall contain a definite recommendation *stating the reasons* for or against the proposed adoption."

Section 14. Section 40-8-123, MCA, is amended to read:

"40-8-123. Summary decree. If the child is *a member of the extended family of* one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court *in its discretion,* after examination of *a* report *ordered pursuant to* 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is *in* the best interests of the child."

Section 15. **Repealer.** Section 40-6-124, MCA, is repealed.

Section 16. **Codification instruction.** (1) Sections 1 through 3 are intended to be codified as an integral part of Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to sections 1 through 3.

(2) Sections 10 and 11 are intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to sections 10 and 11.

Approved April 29, 1981.

CHAPTER NO. 531

AN ACT TO REVISE THE METHODS OF PAYMENT IN EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR PAYMENT OF CURRENT FAIR MARKET VALUE; REQUIRING PRORATION OF TAXES AND WEED CONTROL; AND AMENDING SECTIONS 70-30-301, 70-30-302, AND 70-30-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-301, MCA, is amended to read:

"70-30-301. Hearing — judge to preside — determinations by commissioners. (1) Immediately upon nomination and appointment of

commissioners under 70-30-207, the same shall proceed to meet at the time and place stated in the order appointing them, which time shall not be more than 10 days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the *current fair market* value of the property sought to be appropriated and all improvements thereon pertaining to the realty and of each and every separate estate and interest therein. If it consists of different parcels, the *current fair market* value of each parcel and each estate or interest therein must be separately assessed.

(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in *current fair market* value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection (3)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the *current fair market* value;

(d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.

(4) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly."

Section 2. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right thereto

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shall be deemed to have accrued at the date of the service of the summons, and its *current fair market* value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in *the current fair market* value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

(4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.

(5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or depreciation in *current fair market* value, nor shall the same be used as the basis of computing such compensation or depreciation."

Section 3. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. *However, at the option of the defendants, payments may be made:*

(a) if a fee simple interest in the defendant's land is taken, on an annual basis, utilizing the installment contract method;

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or

(c) if an easement over or through the defendants' property is involved, in either a single payment or in not more than five consecutive annual installments.

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(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 4. **Current fair market value.** Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use of the property and its value for such use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

Section 5. **Weed control responsibility.** The plaintiff, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on such land until natural grasses have taken over the property and noxious weeds have ceased to exist.

Section 6. **Proration of taxes.** The plaintiff shall be assessed his pro rata share of taxes for the land being condemned as of the date of possession or summons, whichever occurs first. The plaintiff shall be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

Section 7. **Codification instruction.** Sections 4, 5, and 6 are intended to be codified as an integral part of Title 70, chapter 30, part 3, and the provisions of Title 70, chapter 30, apply to sections 4, 5, and 6, and sections 4, 5, and 6 apply to Title 70, chapter 30.

Approved April 29, 1981.

CHAPTER NO. 532

AN ACT TO PROVIDE FOR THE SALE OF REGULAR DEER AND ELK TAGS TO RESIDENTS WHO ARE 65 YEARS OF AGE OR OLDER AT A PRICE NOT TO EXCEED ONE-HALF OF THAT PAID BY RESIDENTS WHO ARE 15 YEARS OF AGE OR OLDER AND UNDER 65 YEARS OF AGE; AMENDING SECTION 87-2-801, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-801, MCA, is amended to read:

"87-2-801. Residents over sixty-two years of age. *(1)* A resident, under the definition of 87-2-102, who is 62 years or older shall be entitled to fish and hunt game birds with a conservation license issued by the department. The form of such license shall be prescribed by the department.

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(2) A resident who is 65 years of age or older is also entitled to purchase regular resident deer and elk tags at a price that is no more than one-half of the fee paid by a resident who is 15 years old or older and who is under 65 years of age."

Section 2. **Effective date.** This act is effective on May 1, 1982.

Approved April 29, 1981.

CHAPTER NO. 533

AN ACT TO STIMULATE THE PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS IN MONTANA BY PROVIDING TAX INCENTIVES; AMENDING SECTIONS 15-30-121 AND 15-31-114, MCA.

WHEREAS, Montana's predominantly agricultural economy is dependent on fertile soil; and

WHEREAS, saline seep has damaged 500,000 acres of our state and is continuing to claim more than 20,000 acres a year; and

WHEREAS, strip mining for coal is decreasing, at least temporarily, the acres of grazing land in the state; and

WHEREAS, erosion, overgrazing, and intensive cropping are depleting our soils faster than inorganic fertilizers can renew them; and

WHEREAS, organic matter properly aged and applied to the soil can dramatically increase the fertility of soil; and

WHEREAS, solid waste disposal by industry and municipalities is presently an expensive and potential environmentally hazardous undertaking; and

WHEREAS, the economic and environmental burden of disposing of such solid wastes may be partially offset through the use of such wastes by an active organic fertilizer processing industry in Montana; and

WHEREAS, tax incentives are needed to initially assist and stimulate the production and use of organic fertilizer and soil amendments produced from industrial and municipal wastes.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 5] is to promote the use of organic matter produced by Montana industries and municipalities to revitalize Montana lands and to assist in making organic fertilizer economically competitive with inorganic fertilizer.

Section 2. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Raw organic matter" means unprocessed plant or animal waste products.

(2) "Organic fertilizer" means raw organic matter that has been processed and aged for use in increasing soil condition and fertility, and includes soil amendments as that term is defined in 80-10-101.

Section 3. **Deduction for purchase of Montana produced organic fertilizer.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct his expenditures for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

Section 4. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974. However, the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse.

(4) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(5) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(6) that portion of expenses for organic fertilizer allowed as a deduction under [section 3] which was not otherwise deducted in computing taxable income."

Approved April 29, 1981.

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CHAPTER NO. 534

AN ACT TO REVISE THE SALARY SCHEDULE OF A YOUTH COURT PROBATION OFFICER; AMENDING SECTION 41-5-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-704, MCA, is amended to read:

"41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a *salary* specified by the court depending on the formal training and experience of each respective officer, *but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. The court shall, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1982, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.* The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one county whereby such county shall pay the entire salary.

(2) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503."

Approved April 29, 1981.

CHAPTER NO. 535

AN ACT TO INSURE THE AVAILABILITY OF BASIC LEVELS OF BENEFITS UNDER DISABILITY INSURANCE POLICIES AND CONTRACTS FOR THE CARE AND TREATMENT OF MENTAL ILLNESS; AMENDING SECTIONS 33-22-701 THROUGH 33-22-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-701, MCA, is amended to read:

"33-22-701. Purpose. The purpose of this part is to encourage consumers to avail themselves of basic levels of benefits under health insurance policies and contracts for the care and treatment of *mental illness,*

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alcoholism, and drug addiction and to preserve the rights of the consumer to select such coverage according to his medical and economic needs."

Section 2. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital, as defined in the policy or contract, for the necessary care and treatment of *mental illness,* alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of *mental illness,* alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of *mental illness,* alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for *mental illness,* alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient; and

(c) reasonable charges made by *a mental health,* alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center.

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed, certified, or approved as an alcoholism or drug addiction treatment center by the state.

(4) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

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(5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder."

Section 3. Section 33-22-703, MCA, is amended to read:

"33-22-703. Availability of coverage for mental illness, alcoholism, and drug addiction. Insurers and health service corporations transacting health insurance in this state must make available under hospital and medical expenses incurred insurance policies and under hospital and medical service plan contracts the level of benefits specified in this section for the necessary care and treatment of *mental illness,* alcoholism, and drug addiction subject to the right of the applicant for a group or individual policy or contract to reject the coverage or to select any alternative level of benefits as may be offered by the insurer or service plan corporation.

(1) Under basic hospital expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract.

(2) Under major medical policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient hospital benefits may be limited to 30 calendar days per year as defined in the policy or contract. If inpatient hospital benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for *mental illness,* alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000.

(c) Maximum lifetime benefits may, for *mental illness,* alcoholism, and drug addiction in the aggregate, be no less than an amount equal to the lesser of $10,000 or 25% of the lifetime policy limit."

Section 4. Section 33-22-704, MCA, is amended to read:

"33-22-704. Applicability. *(1) Except as provided in subsection (2), this* part applies to policies or contracts delivered or issued for delivery in this state more than 120 days after July 1, 1979, but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

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(2) With respect to mental illness, this part applies to policies or contracts delivered or issued for delivery in this state after [120 days after the effective date of this act]."

Approved April 29, 1981.

CHAPTER NO. 536

AN ACT TO AMEND SECTION 15-36-101, MCA, TO PROVIDE A SINGLE PERCENTAGE RATE OF 5 PERCENT TO BE USED IN COMPUTING THE SEVERANCE TAX ON PETROLEUM COLLECTED DURING FISCAL YEARS 1982 AND 1983 AND 6 PERCENT TO BE USED IN COMPUTING THE SEVERANCE TAX ON PETROLEUM COLLECTED THEREAFTER; PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) 5% of the total gross value of all the *petroleum and other mineral or crude oil produced by* such person from each lease or *unit on or after April 1, 1981, and on or before March 31, 1983, and 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit thereafter*; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

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(2) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If, in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. **Applicability.** This act applies to crude oil produced on or after April 1, 1981.

Section 3. **Immediate effective date.** This act is effective on passage and approval of Senate Bill 200.

Section 4. **Severability.** (1) If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of it applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) If application of the severance tax rate imposed by this act on oil produced prior to the effective date of this act is found to be invalid, the severance tax imposed by this act applies to oil produced on or after the effective date of this act.

Approved April 29, 1981.

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CHAPTER NO. 537

AN ACT TO EXEMPT DOMESTIC INTERNATIONAL SALES CORPORATIONS FROM THE CORPORATE LICENSE TAX; AND TO TAX THE SHAREHOLDERS OF DOMESTIC INTERNATIONAL SALES CORPORATIONS; AMENDING SECTIONS 15-30-111 AND 15-31-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the

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entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of such corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 shall be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 2. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

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(c) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(d) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(e) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(f) all Montana income tax refunds or credits thereof;

(g) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(h) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-103(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective."

Section 3. **Applicability.** This act applies to taxable years beginning after December 31, 1981.

Approved April 29, 1981.

CHAPTER NO. 538

AN ACT TO ALLOW THE SALE OF COAL MINED UNDER LEASES FROM THE BOARD OF LAND COMMISSIONERS TO FOREIGN PERSONS; AMENDING SECTION 77-3-305, MCA; AND REPEALING SECTION 77-3-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-305, MCA, is amended to read:

"**77-3-305. Limitations on leasing.** The board shall not issue leases:

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(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those interests within countries whose borders are contiguous to the United States; or

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future."

Section 2. **Repealer.** Section 77-3-315, MCA, is repealed.

Approved April 29, 1981.

CHAPTER NO. 539

AN ACT REVISING AND CLARIFYING THE MONTANA MAJOR FACILITY SITING ACT TO INCREASE THE EXEMPTION LIMIT FOR AN ADDITION TO A FACILITY; REVISING THE DEFINITION OF A FACILITY; EXEMPTING FACILITIES SUBJECT TO THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; EXPANDING EXEMPTION CRITERIA FOR THE RELOCATION, RECONSTRUCTION, OR UPGRADING OF A FACILITY; CLARIFYING APPELLATE REVIEW PROCEDURES; CLARIFYING WHICH DECISIONS OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES ARE CONCLUSIVE; REQUIRING THE BOARD TO WAIVE THE ALTERNATIVE SITE STUDY, ADVANCE NOTICE, AND MINIMUM ADVERSE ENVIRONMENTAL IMPACT REQUIREMENTS WHEN A FACILITY WILL BE CONSTRUCTED IN A COUNTY THAT HAS EXPERIENCED SEVERE UNEMPLOYMENT PROBLEMS BECAUSE OF A PLANT CLOSURE; AMENDING SECTIONS 75-20-104, 75-20-202, 75-20-211, 75-20-216, 75-20-218, 75-20-220, 75-20-304, AND 75-20-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the *facility is operated.*

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated

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with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, *and those facilities subject to The Montana Strip and Underground Mine Reclamation Act,* each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of *$10 million*;

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(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of *$10 million*;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of *$10 million*;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of *$10 million*; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of *$10 million*;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of *$750,000*;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) This chapter does not apply to any aspect of a facility over which an agency of the federal government has exclusive jurisdiction, but applies to any unpreempted aspect of a facility over which an agency of the federal government has partial jurisdiction.

(2) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(3) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

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(a) would otherwise be covered by this chapter*;* and

(b) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods*; or*

(c) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility."

Section 3. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required *under the laws administered by the department of health and the board of health* in such form as the board requires under applicable rules, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of reasonable alternate locations for the proposed facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility;

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by *order or* rule or the department and department of health by order *or rule may* require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility may be located, both as primarily and as alternatively proposed and on the following state government agencies:

(a) environmental quality council;

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(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of community affairs;

(f) department of highways;

(g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area or alternative areas in which any portion of the proposed facility may be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 4. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health *or department of health*, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required *under the laws administered by the department of health or the board of health* and this chapter. The department of health and the board of health shall determine compliance with *all standards, permit requirements,* and implementation plans *under their jurisdiction* for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The

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decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in *subsections (2) through (7) of* 75-20-503 that are a part of the determinations made under *the laws administered by the department of health and the board of health.* Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; community affairs; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 5. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board

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may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the *department of health and the board of health* shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the *department of health and the board of health*."

Section 6. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health *or the department of health*, the board and the board of health *or the department of health* shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties,

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naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health *or department of health* proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 7. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

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(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104 or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 8. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board, board of health, and department of health decisions. (1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department of health and the board of health and this chapter, the decision may only be appealed in conjunction with the final decision of the board as provided in 75-20-406(1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the laws administered by the department of health and the board of health; or

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(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as herein provided on all matters that are not the subject of a pending appeal by the applicant under 75-20-406(3)(a)."

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 540

AN ACT TO SIMPLIFY UTILIZATION OF FUNDS AVAILABLE FOR FINANCING THE FOUNDATION PROGRAM AND PERMISSIVE PORTIONS OF PUBLIC SCHOOL BUDGETS; AMENDING SECTIONS 20-9-345, 20-9-351, AND 20-9-352, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-345, MCA, is amended to read:

"**20-9-345. Distribution of excess state equalization moneys.** Moneys appropriated for foundation program purposes are exempt from the provisions of 17-2-108. Moneys appropriated for foundation program purposes shall be expended to as great an extent as possible, irrespective of the availability of foundation program revenues from other sources. Any unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the fiscal year shall be *retained for funding primary and secondary education in ensuing years.*"

Section 2. Section 20-9-351, MCA, is amended to read:

"**20-9-351. Additional state levy for state deficiency.** (1) If the estimated state equalization level made under the provisions of 20-9-348 is less than 100% *or if the permissive funding level made under the provisions of 20-9-352 is less than 100%*, it shall be the duty of the director of the department of revenue to levy additional taxes in such number of mills on the taxable value of all taxable property within the state as shall be required to complete the financing of the foundation programs *prescribed under 20-9-348 and of permissive programs as prescribed under 20-9-352* of all elementary districts or all high school districts of the state.

(2) The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies *and shall deposit such proceeds in the earmarked revenue account established under 20-9-343.* The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

(a) determine the total amount required from this source of revenue by the several elementary or high school districts of the state;

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(b) determine the total amount of moneys available for this source of revenue;

(c) calculate the percentage the amount determined in subsection (2)(b) is of the amounts determined separately in subsection (2)(a) for all elementary or all high school districts;

(d) multiply each elementary district or each high school district requirement for this source of revenue by the percentage calculated in subsection (2)(c).

(3) When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's additional state levy for elementary schools or high schools or, if there is no additional state levy under this section, the excess may be *retained in* the state equalization aid account for the reduction of the legislative appropriation.

(4) The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency", and it shall be the last source of revenue in calculating the financing of the *foundation and permissive programs for* elementary and high school *districts.*

(5) The superintendent of public instruction shall compute the budgeted requirement for this source of revenue for each district and shall supply the total state requirements for the elementary district and the high school district programs to the director of the department of revenue on the second Monday of August."

Section 3. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 9 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 9 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency

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shall be paid to the district from the earmarked revenue fund according to the provisions of *20-9-351 and subsection (3)* of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 6 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund according to the provisions of *20-9-351 and subsection (3)* of this section.

(3) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the revenue collected is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue *generated by the additional state levy for state deficiency shall remain in the earmarked revenue account to be used for elementary and high school education in ensuing years.* Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund *as established in 20-9-343* for distribution during the next succeeding fiscal year."

Approved April 29, 1981.

CHAPTER NO. 541

AN ACT TO PROVIDE FOR VOTER APPROVAL, AMENDMENT, OR REPEAL OF A MASTER PLAN BY INITIATIVE OR REFERENDUM; AMENDING SECTION 76-1-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-604, MCA, is amended to read:

"76-1-604. Adoption, revision, or rejection of master plan. *(1)* The governing bodies shall *adopt a resolution of intention to* adopt, revise, or reject such proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed plan or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whether or not the plan should be adopted. The provisions of Title 7, chapter 5, part 1, except as in this section otherwise provided, shall apply to such referendum election.

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(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) The qualified electors of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section."

Approved April 29, 1981.

CHAPTER NO. 542

AN ACT TO EXTEND FOR 2 YEARS THE DEADLINE TO EXPEND OR ENCUMBER COAL AREA HIGHWAY RECONSTRUCTION FUNDS APPROPRIATED PRIOR TO JUNE 30, 1979; PROVIDING FOR LOCAL GOVERNMENT CONSULTATIONS; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTION 2 OF CHAPTER 540, LAWS OF 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2 of Chapter 540, Laws of 1977, is amended to read:

"50-1803. Coal area highway reconstruction program. (1) There is appropriated to the department of highways for each of the 4 fiscal years following July 1, 1975, all the funds in the coal area highway improvement account for carrying out the programs authorized by this section. Any funds thus appropriated and not expended before June 30, 1979, may, notwithstanding the provisions of 79-1015.3, be expended or encumbered to carry out this section until June 30, *1983.*

(2) The department of highways, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under section 143, Title 23, United States Code, shall prepare a special construction program for the reconstruction of deficient sections of these highways *in consultation with the governing bodies of the counties in the area.*

(3) The department of highways shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this subsection and any federal funds that may be made available to match such funds; until federal funds are made available to match the funds allocated under this subsection the department of highways may, upon approval of the Montana state highway commission, expend such funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(4) Funds allocated under this subsection shall not be used to match apportionments made for primary and secondary highways under the Federal-Aid Highway Acts; however, nothing in this subsection should be construed to prohibit the implementation of projects otherwise funded by

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apportionments made under the Federal-Aid Highway Acts; furthermore, planning and reconstruction projects may be financed in whole or in part by public and private funds provided such projects conform to the applicable standards, regulations, and procedures of the department of highways and the federal highway administration."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 543

AN ACT TO REESTABLISH THE BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING; CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE GROUNDS FOR REVOCATION OF A LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Optometrists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Optometrists be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of optometrists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

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(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

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(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

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(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: board of optometrists, department of professional and occupational licensing, created by 2-15-1612."

Section 3. Section 2-15-1612, MCA, is amended to read:

"2-15-1612. Board of optometrists. (1) There is a board of optometrists.

(2) The board consists of four members appointed by the governor. Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) *Members* shall serve *staggered 4-year terms.*

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-10-301, MCA, is amended to read:

"37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration and filed it or a certified copy with the county clerk and recorder of the county of his residence;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; *or*

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

Section 5. Section 37-10-311, MCA, is amended to read:

"37-10-311. Revocation — unprofessional conduct. (1) The board may revoke a certificate of registration for:

(a) *physical or mental incompetence*;

(b) *gross malpractice or repeated malpractice*;

(c) *a violation of any of the provisions of this chapter or rules or orders of the board; or*

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

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(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state."

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 544

AN ACT TO REESTABLISH THE BOARD OF BARBERS UNDER EXISTING STATUTORY AUTHORITY AND RULES; REVISING BOARD MAKEUP; EXEMPTING COSMETOLOGISTS FROM PROHIBITIONS UNDER BARBERING LAWS; GIVING THE BOARD AUTHORITY TO GRANT TEMPORARY LICENSES TO BARBERSHOPS; REQUIRING ANNUAL INSPECTIONS OF BARBERSHOPS; REDUCING APPRENTICESHIP TERM; AUTHORIZING RECIPROCAL LICENSING; DELETING PRICE-SETTING PROVISIONS; DELETING CRIMINAL CONVICTION AS GROUNDS FOR DENIAL OR REVOCATION OF A LICENSE; AMENDING SECTIONS 2-8-103, 2-15-1625, 37-30-101, 37-30-203, 37-30-305, 37-30-403, 37-30-404, 37-30-422, AND 37-30-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Barbers and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Barbers be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of barbers is reestablished for 6 years pursuant to 2-18-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(d) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(e) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(f) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(g) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(h) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(i) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(j) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

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(k) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(l) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(m) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(n) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(o) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(p) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(q) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(r) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(s) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(t) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(u) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

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(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

(5) The following agency terminates on July 1, 1987: the board of barbers, department of professional and occupational licensing, created by 2-15-1625."

Section 3. Section 2-15-1625, MCA, is amended to read:

"**2-15-1625. Board of barbers.** (1) There is a board of barbers.

(2) The board consists of three *barbers and one public member who is not a barber* appointed by the governor. Each *barber* member shall be a practicing barber who has been a barber in this state for at least 5 years immediately before his appointment.

(3) Each member shall serve for a term of 3 years. The governor may remove a member for cause.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 37-30-101, MCA, is amended to read:

"**37-30-101. Definitions — practice of barbering.** (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

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(b) "Board" means the board of barbers provided for in 2-15-1625.

(c) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(2) An "apprentice", under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting the hair;

(c) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(d) singeing or shampooing the hair or applying hair tonic, or dyeing the hair of male persons;

(e) applying cosmetic preparations, antiseptics, powders, oils, lotions to scalp, face, or neck.

(4) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 5. Section 37-30-203, MCA, is amended to read:

"37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board. He shall receive *a salary* plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

Section 6. Section 37-30-305, MCA, is amended to read:

"37-30-305. Application for barber's certificate — examination. On completion of *3 months* of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply to the department to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three times before expiration of the apprentice

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card. If an apprentice fails to pass the examination for a barber's certificate of registration three times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering."

Section 7. Section 37-30-403, MCA, is amended to read:

"37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, school, or college until such time as the initial inspection is completed."

Section 8. Section 37-30-404, MCA, is amended to read:

"37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 10 years' continuous experience as a barber.

(2) The owner of the school or college shall first secure a permit to operate granted by the board and issued by the department, on payment of an annual license fee of $50, and shall keep the permit prominently displayed.

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(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $2,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board."

Section 9. Section 37-30-422, MCA, is amended to read:

"37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers *in consultation with* the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease."

Section 10. Section 37-30-425, MCA, is amended to read:

"37-30-425. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-412; 37-30-413; and 37-30-421;

(2) gross malpractice or gross incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the commission of any of the offenses described in 37-30-203."

Section 11. **Admission of licensee from other state.** The department may issue, at the board's discretion, a barber's license without examination to a person who holds a current license as a barber from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

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Section 12. **Codification instruction.** Section 11 is intended to be codified as an integral part of Title 37, chapter 30, and the provisions of Title 37, chapter 30, apply to section 10.

Section 13. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 545

AN ACT TO GENERALLY REVISE THE LAWS GOVERNING OUTFITTERS AND GUIDES IN THE STATE OF MONTANA; AMENDING SECTIONS 2-15-3403, 87-4-101 THROUGH 87-4-106, 87-4-121 THROUGH 87-4-128, 87-4-130, 87-4-131, AND 87-4-141 THROUGH 87-4-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3403, MCA, is amended to read:

"2-15-3403. Montana outfitters' council. (1) There is a Montana outfitters' council.

(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in *the city where* the *regional* headquarters *is located during the month* of March. A majority vote *cast by written ballot* of all the outfitters in attendance at the meeting shall determine the *delegate* from the district. At the election an alternate *delegate* shall also be elected *by written ballot* to serve if the *delegate* is unable to act.

(3) The members shall serve staggered 3-year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of 2-15-122."

Section 2. Section 87-4-101, MCA, is amended to read:

"87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing *January 1* and ending *December 31* of the *same* year.

(2) "Nonresident" means a person other than a resident.

(3) "Outfitter" means any person, persons, company, or corporation who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

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(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game *and accompanies such a party or person on an expedition for any of these purposes*;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) *for consideration* aids or assists any person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-3403.

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 3. Section 87-4-102, MCA, is amended to read:

"87-4-102. Determination of what constitutes consideration. The providing of the services, property, or equipment mentioned in 87-4-101*(3) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish* shall be presumed to have been for consideration for the purposes of this part."

Section 4. Section 87-4-103, MCA, is amended to read:

"87-4-103. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of *fish and game laws*; any such outfitter or employee of such outfitter who shall willfully fail to or refuse to report any violation of *fish and game laws* shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

(2) No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 5. Section 87-4-104, MCA, is amended to read:

"87-4-104. Powers and duties of department relating to outfitters and guides. The department shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be

available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current *license* year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account.

(2) cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) establish a minimum of two meetings annually with the *outfitters'* council;

(4) consult with the *outfitters'* council to develop policy concerning the administration of outfitting;

(5) designate a warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations."

Section 6. Section 87-4-105, MCA, is amended to read:

"87-4-105. Outfitters' council. The council shall have the authority and duty to make recommendations to the department and the director as to:

(1) outfitter standards *and professional guide standards*;

(2) rules of procedures and rules to effectuate this part, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(3) hearings and proceedings to suspend or revoke licenses of outfitters and *professional* guides and to recommend suspension or revocation of licenses for due cause;

(4) any reasonable rules, not in conflict with this part, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public."

Section 7. Section 87-4-106, MCA, is amended to read:

"87-4-106. Authorization for rules. The department may adopt, promulgate, and enforce rules recommended by the *outfitters'* council as provided in 87-4-105 and all other rules it may consider proper for the administration and enforcement of the provisions of this part and the regulation of outfitting and guiding to provide for the services to the public."

Section 8. Section 87-4-121, MCA, is amended to read:

"87-4-121. License required — services performed — standards. (1) No person may act as an outfitter *or* professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

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(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the department.

(3) Outfitters and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting *or fishing opportunities.*

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients."

Section 9. Section 87-4-122, MCA, is amended to read:

"87-4-122. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications:

(1) be a person of at least 18 years of age *who is physically capable and mentally competent* to perform his duties as an outfitter;

(2) be a resident of Montana;

(3) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the department or its designated agent);

(4) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(5) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws *or applicable regulations* of any state or the United States within the past 5 years;

(6) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, *professional* guide's, *or conservation* license from the state of Montana;

(7) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(8) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or *professional* guide during the license year immediately preceding that for which the application is made;

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(9) have not committed any negligent act or misconduct while acting as an outfitter or *professional* guide *that* caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or *professional* guide during the license year immediately preceding that for which the application is made;

(10) have not, at any time, *pleaded guilty to or been adjudged by a court guilty* of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a sentence has been *deferred or suspended* for a felony.

(11) have substantially complied with all department regulations and state and federal laws concerning outfitters and *professional* guides, if the applicant has previously held a license as an outfitter or *professional* guide."

Section 10. Section 87-4-123, MCA, is amended to read:

"87-4-123. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age *who is physically capable and mentally competent* to perform his duties as a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A *professional* guide shall have been issued a valid wildlife conservation license."

Section 11. Section 87-4-124, MCA, is amended to read:

"87-4-124. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the department which shall include:

(a) the applicant's full name, *residence,* address, *conservation license number, driver's license number, birth date, physical description,* and telephone number;

(b) the address of his principal place of business in the state of Montana;

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(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application is involved;

(d) the experience of the applicant, including years of experience as an outfitter or *professional* guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed that the *professional* guide is in fact to be employed by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) *an affidavit* by *the outfitter* to the director that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the *appropriate agency or landowner on whose lands* he will establish hunting camps.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the director.

(4) Only one application for an outfitter's or *professional* guide's license may be made *in* any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 87-4-129."

Section 12. Section 87-4-125, MCA, is amended to read:

"87-4-125. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the director or an agent designated by him, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(1) *federal and state* fish and game laws and regulations;

(2) practical woodsmanship;

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(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as *listed* on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms;

(9) federal and state regulations as applicable to outfitting;

(10) first aid;

(11) boat safety;

(12) water safety;

(13) care and safety of livestock."

Section 13. Section 87-4-126, MCA, is amended to read:

"**87-4-126. Residence requirements — waiver and reciprocity.** (1) Residence requirements for procuring an outfitter's license are waived as to persons who are *bona fide residents* of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana, except for fee.

(2) For the purpose of obtaining a *professional* guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides."

Section 14. Section 87-4-127, MCA, is amended to read:

"**87-4-127. Fees.** (1) Applications shall be accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied:

(a) resident outfitter's license fee $50;

(b) resident professional guide's fee $15;

(c) nonresident outfitter's license fee $150;

(d) nonresident professional guide's fee ..... $100.

(2) If the nonresident resides in a state requiring residents of the state of Montana to pay in excess of such amounts for a similar license, the fee for such nonresident *outfitter's* or *professional guide's license* shall be the same amount as the higher fee charged in the state where the nonresident resides. All fees collected under this part shall be deposited as provided in 87-1-601.

(3) The license fee shall be used to investigate the applicant, to enforce this part, and for administrative costs."

Section 15. Section 87-4-128, MCA, is amended to read:

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"87-4-128. Investigation of applicant — issuance or denial of license. (1) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's *or professional guide's* license and an applicant's qualifications as he considers advisable.

(2) The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this part *and completing an application for license renewal on a form provided by the department* but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license."

Section 16. Section 87-4-130, MCA, is amended to read:

"87-4-130. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under his employer's license, after submitting his application with the proper license fee, until the license is issued or *denied.*

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of *the* endorsing outfitter and is valid only while the holder of such license is employed by *the* endorsing outfitter."

Section 17. Section 87-4-131, MCA, is amended to read:

"87-4-131. Transfer or amendment of outfitter's license. (1) No outfitter's license may be transferred during any license year.

(2) An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

(3) Subject to approval by the director, the immediate members of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure therefor."

Section 18. Section 87-4-141, MCA, is amended to read:

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"87-4-141. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) *having pleaded guilty to or been adjudged by a court guilty* of a felony, *including a case in which the sentence is suspended or imposition of the sentence is deferred, unless* civil rights *have been* restored *pursuant to law*;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States *within the past 5 years*;

(6) a substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law;

(7) the willful employment of an unlicensed *professional* guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or *professional* guide *that* causes *an accident or injury* to person or property of any client of such outfitter or *professional* guide."

Section 19. Section 87-4-142, MCA, is amended to read:

"87-4-142. Procedure for suspension or revocation of license — reissuance. (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the director. Thereupon, the director shall initiate a preliminary investigation of all facts in connection with the charge.

(2) A copy of all information shall be transmitted to the *outfitters'* council. The *outfitters'* council may make recommendation as to the action to be taken. Any such recommendation shall be made in writing and delivered to the director within 20 days after date of transmittal of such information to the council.

(3) If the accusation be deemed to be unfounded or trivial, the director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall *appoint a hearing officer who shall conduct a hearing on such charges in accordance with the Montana Administrative Procedure Act.*

(4) The director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon

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the licensee involved not less than 20 days prior to the day set for hearing thereon, which said hearing shall be before *an appointed hearing officer* at a time and place set by such *officer*. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the *director* may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(5) A revoked or suspended license may be reissued or reinstated at the discretion of the *director*."

Section 20. Section 87-4-143, MCA, is amended to read:

"87-4-143. Appeal procedure. Any person who feels aggrieved by the denial of issuance of a license or suspension or revocation of a license as an outfitter or *professional* guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the *director*, and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo, and upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the *director* or take such other action as the court may deem just and proper. If the *director* or the court has ordered a stay of any revocation or suspension and the *director's* revocation or suspension is thereafter sustained by the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the *director*."

Section 21. Section 87-4-144, MCA, is amended to read:

"87-4-144. Enforcement. The warden designated by the department to primarily administer outfitting and guiding laws and rules, other wardens, and all peace officers shall enforce this part."

Approved April 29, 1981.

CHAPTER NO. 546

AN ACT TO REDUCE INDIVIDUAL INCOME TAX ON INTEREST INCOME EARNED BY A TAXPAYER AGE 65 OR OLDER; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined

in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) *Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted* gross income does not include the following which are exempt from taxation under this chapter:

(a) *all* interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return.

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(i) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

Section 2. **Applicability.** This act applies to taxable years beginning after December 31, 1980.

Approved April 29, 1981.

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CHAPTER NO. 547

AN ACT TO CONTROL AND REGULATE THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) It is the intent of the legislature that [this act] be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by [this act] and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) [This act] is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. [This act] is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in [this act] have been followed.

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

Section 3. **Exemptions.** [This act] does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects concerned with the study, design, or construction of state facilities or highways;

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(2) physicians, dentists, or other medical, dental, or health-care providers; and

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor.

Section 4. **Use and selection of private consultants.** (1) A state agency may use a private consultant only if:

(a) there is a substantial need for the consulting services; and

(b) the state agency cannot adequately perform the consulting services with its own personnel.

(2) In selecting a private consultant, a state agency shall:

(a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Section 5. **Information relating to consultant studies.** (1) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the legislative fiscal analyst and the office of budget and program planning with a brief resume of the results accomplished by the private consultant.

(2) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the central office of the state agency or repository designated by the state agency.

(3) As part of the biennial budgetary hearing process conducted by the legislative fiscal analyst and the office of budget and program planning, a state agency shall upon request supply the legislative fiscal analyst and the office of budget and program planning with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

Section 6. **Solicitation of bids.** (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office or in another appropriate division or unit of the state agency. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

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(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

Section 7. **Restriction on former employees.** A principal or officer of a consulting firm or an individual who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the 2 years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency and the date of termination of the employment.

Section 8. **Contract in violation void.** (1) If a state agency contracts to use a private consultant without complying with the requirements of [section 6] or if a person contracts to perform a consulting service for a state agency without complying with the requirements of [section 7], the contract is void.

(2) If a contract is void under this section, the state or state agency may not make any payments under the contract from any state or federal funds held in or outside the state treasury if violation of [this act] was caused by the consultant.

(3) If a contract is void under this section because of a violation of [this act] by the state agency, the state shall pay the consultant for all work performed up to the date that the consultant is informed in writing of the violation by the state agency.

Approved April 29, 1981.

CHAPTER NO. 548

AN ACT TO CLARIFY THAT THE INDIVIDUAL INCOME TAX BASE EXEMPTION IS $800; AMENDING SECTIONS 1, 3, AND 5 OF INITIATIVE NO. 86 AND SECTION 9, CHAPTER 698, LAWS OF 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1 of Initiative No. 86 is amended to read:

"Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

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(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Purposely" is as defined in 45-2-101.

(14) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(15) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(16) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(17) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(18) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations.""

Section 2. Section 3 of Initiative No. 86 is amended to read:

"Section 3. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsections (7) *and (8)*, in the case of an individual, the exemptions provided by subsections (2) through (6) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year

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in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

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(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 *as amended by this act.*

(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section unadjusted by subsection (7) by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.""

Section 3. Section 5 of Initiative No. 86 is amended to read:

"Section 5. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than *$1,000, as adjusted under the provisions of subsection (7),* and married individuals not filing separate returns and having a combined gross income for the taxable year of more than *$2,000, as adjusted under the provisions of subsection (7),* shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, *as adjusted under the provisions of 15-30-112(7) and (8),* for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1

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than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return."

Section 4. Section 9, Chapter 698, Laws of 1979 is amended to read:

"Section 9. **Deductions for exemptions in 1979 and 1980.** The exemption amounts allowed in 15-30-112 are increased for taxable years beginning after December 31, 1978, and before January 1, 1980, by *$250 and for taxable years beginning after December 31, 1979, and before January 1, 1981, by $450.*"

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 549

AN ACT PROVIDING AN AD HOC COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT AND SURVIVORSHIP ALLOWANCES PAYABLE TO MEMBERS OF THE PUBLIC EMPLOYEES', TEACHERS', HIGHWAY PATROLMEN'S, SHERIFFS', AND GAME WARDENS' RETIREMENT SYSTEMS AND THEIR BENEFICIARIES AND TO MEMBERS OF THE MUNICIPAL POLICE RETIREMENT SYSTEM RETIRED ON OR AFTER JULY 1, 1975, AND THEIR BENEFICIARIES; PROVIDING A MINIMUM MONTHLY BENEFIT ALLOWANCE FOR CERTAIN MEMBERS OF THESE RETIREMENT SYSTEMS AND THEIR BENEFICIARIES; PROVIDING FUNDING FOR THE COST-OF-LIVING INCREASE AND MINIMUM MONTHLY BENEFIT ALLOWANCE; AMENDING SECTIONS 19-3-801, 19-4-605, 19-4-802, 19-4-804, 19-4-1001, 19-6-402, 19-6-404, 19-7-404, 19-8-504, 19-9-702, AND 19-9-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system retired on or

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before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

Section 2. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on the ratio of a member's years of creditable service to 30 multiplied by $300 and subject to the adjustments listed in subsection (1)(b).

(b) The following adjustments apply to the minimum monthly benefit allowance:

(i) The minimum monthly benefit must be based on 30 years of creditable service for a recipient of a disability or survivorship allowance.

(ii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an optional retirement allowance or for a surviving spouse or dependent child receiving a survivorship allowance.

(iii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an early retirement allowance.

(iv) The benefit must be multiplied by a ratio equal to the member's final average salary to $4,800 (such ratio not to exceed 1) for elected officials, Montana national guardsmen, and independent contractors.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 1].

Section 3. Section 19-3-801, MCA, is amended to read:

"19-3-801. Employer contribution rates — actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be *6.02%* from July 1, *1981*, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

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(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons."

Section 4. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the teachers' retirement system retired on or before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the teachers' retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

Section 5. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on the ratio of a member's years of creditable service to 30 multiplied by $300 and subject to the adjustments listed in subsection (1)(b).

(b) The following adjustments apply to the minimum monthly benefit allowance:

(i) The minimum monthly benefit must be based on 30 years of creditable service for a recipient of a disability or survivorship allowance.

(ii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the retirement board for a member or beneficiary receiving an optional retirement allowance or for a surviving spouse or dependent child receiving a survivorship allowance.

(iii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the retirement board for a member or beneficiary receiving an early retirement allowance.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 4].

Section 6. Section 19-4-804, MCA, is amended to read:

"19-4-804. Allowance for superannuation retirement. (1) Upon superannuation retirement a member shall receive a retirement allowance

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consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(2) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board."

Section 7. Section 19-4-802, MCA, is amended to read:

"19-4-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 55 may retire from service and be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-4-804(1) and *[section 5]*, with the exception that the allowance will be reduced by ½ of 1% multiplied by the number of months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service."

Section 8. Section 19-4-1001, MCA, is amended to read:

"19-4-1001. Allowances for death of member. (1) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-4-802, 19-4-804(1), and *[section 5]* in the same manner as if the member elected option A provided for in 19-4-702(2)(a).

(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of $500 is payable to his designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday."

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Section 9. Section 19-4-605, MCA, is amended to read:

"19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions shall be accumulated and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to *6.432%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amounts required to allow regular interest on the annuity savings fund and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(6) All pensions and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also an amount to cover expenses of administration."

Section 10. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the highway patrolmen's retirement system retired on or before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the highway patrolmen's retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

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Section 11. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on the ratio of a member's years of creditable service to 25 multiplied by $450 and subject to the adjustments listed in subsection (1)(b).

(b) The following adjustments apply to the minimum monthly benefit allowance:

(i) The minimum monthly benefit must be based on 25 years of creditable service for a recipient of a disability or survivorship allowance.

(ii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an optional retirement allowance or for a surviving spouse or dependent child receiving a survivorship allowance.

(iii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an early retirement allowance.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 10].

Section 12. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to *16.57%* of the salaries paid to the highway patrolmen who are covered by this account from the general fund."

Section 13. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the sheriffs' retirement system retired on or before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the sheriffs' retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

Section 14. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on the ratio of a member's years of creditable service to 25 multiplied by $300 and subject to the adjustments listed in subsection (1)(b).

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(b) The following adjustments apply to the minimum monthly benefit allowance:

(i) The minimum monthly benefit must be based on 25 years of creditable service for a recipient of a disability or survivorship allowance.

(ii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an optional retirement allowance or for a surviving spouse or dependent child receiving a survivorship allowance.

(iii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an early retirement allowance.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 13].

Section 15. Section 19-7-404, MCA, is amended to read:

"**19-7-404. Counties' contributions.** *(1)* The various counties of Montana shall pay monthly *7.62%* of each sheriff's gross salary into the retirement account created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

Section 16. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the game wardens' retirement system retired on or before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the game wardens' retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

Section 17. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on a ratio of a member's years of creditable service to 25 multiplied by $300 and subject to the adjustments listed in subsection (1)(b).

(b) The following adjustments apply to the minimum monthly benefit allowance:

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(i) The minimum monthly benefit must be based on 25 years of creditable service for a recipient of a disability or survivorship allowance.

(ii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an optional retirement allowance or for a surviving spouse or dependent child receiving a survivorship allowance.

(iii) The minimum monthly benefit must be adjusted by the actuarial factors determined by the board for a member or beneficiary receiving an early retirement allowance.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 16].

Section 18. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to *7.15%* of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601, all such collections until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 19. **Cost-of-living increase.** (1) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the municipal police retirement system retired on or after July 1, 1975, but on or before July 1, 1979, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service.

(2) Effective July 1, 1981, every service or disability retirement allowance or survivorship allowance payable to a member of the municipal police retirement system retired after July 1, 1979, but on or before June 30, 1981, or his beneficiary shall be increased by 50 cents for each year of a member's creditable service multiplied by a ratio equal to the number of months retired after July 1, 1979, but on or before June 30, 1981, and 24.

Section 20. **Minimum monthly benefit allowance for certain members.** (1) (a) A member terminated on or before June 30, 1981, with vested rights who is receiving a service or disability retirement allowance or his beneficiary who is receiving a service or disability retirement allowance or his surviving spouse or dependent child who is receiving a survivorship allowance is eligible for a minimum monthly benefit allowance based on the ratio of a member's years of creditable service to 20 multiplied by $450 and subject to the adjustment listed in subsection (1)(b).

(b) The minimum monthly benefit must be based on 20 years of creditable service for a recipient of a disability or survivorship allowance.

(2) A recipient who is eligible for a minimum monthly benefit allowance under subsection (1)(a) is entitled to receive this benefit increase before his allowance is adjusted under [section 19].

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Section 21. Section 19-9-702, MCA, is amended to read:

"19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation paid to all active members during the preceding year, and the state's contribution shall be *14.04%* of such compensation."

Section 22. Section 19-9-703, MCA, is amended to read:

"19-9-703. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. The employer's contribution shall be *14.04%* of the total monthly compensation paid to all active members during the preceding month and shall be payable monthly to the administrator."

Section 23. **Codification instruction.** (1) Sections 1 and 2 are intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to sections 1 and 2.

(2) Sections 4 and 5 are intended to be codified as an integral part of Title 19, chapter 4, and the provisions of Title 19, chapter 4, apply to sections 4 and 5.

(3) Sections 10 and 11 are intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to sections 10 and 11.

(4) Sections 13 and 14 are intended to be codified as an integral part of Title 19, chapter 7, and the provisions of Title 19, chapter 7, apply to sections 13 and 14.

(5) Sections 16 and 17 are intended to be codified as an integral part of Title 19, chapter 8, and the provisions of Title 19, chapter 8, apply to sections 16 and 17.

(6) Sections 19 and 20 are intended to be codified as an integral part of Title 19, chapter 9, and the provisions of Title 19, chapter 9, apply to sections 19 and 20.

Section 24. **Effective date.** This act is effective July 1, 1981.

Approved April 29, 1981.

CHAPTER NO. 550

AN ACT TO EXEMPT FROM INCOME TAXATION PRIVATE OR CORPORATE RETIREMENT BENEFITS NOT IN EXCESS OF A CERTAIN AMOUNT; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined

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in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(c) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(i) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

Section 2. **Effective date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1980.

Approved April 29, 1981.

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CHAPTER NO. 551

AN ACT PERMITTING A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM TO PURCHASE SERVICE CREDITS FOR EMPLOYMENT IN PRIVATE SCHOOLS; AMENDING SECTION 19-4-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Creditable service for employment in private schools.** A person applying for membership may also apply for creditable service in the retirement system for employment service in a private elementary, secondary, or postsecondary educational institution. Employment service must be of an instructional nature or be employment as an administrative officer or a member of the scientific staff. Employment service does not include students employed by a private elementary, secondary, or postsecondary educational institution. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system or returning to the retirement system, whichever is later, for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in lump-sum payment or in installments as agreed between the person and the retirement board. The provisions of 19-4-405 apply to creditable service purchased under this section.

Section 2. Section 19-4-401, MCA, is amended to read:

"19-4-401. Creditable service. (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

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(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404; *and*

(f) any employment service awarded by the retirement board under the provisions of [section 1].

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 4, part 4, and the provisions of Title 19, chapter 4, apply to section 1.

Approved April 29, 1981.

CHAPTER NO. 552

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND ADMINISTER A STATEWIDE INCENTIVE PROGRAM TO AWARD STATE EMPLOYEES FOR COST-SAVING PROPOSALS; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

Section 2. **Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward state employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of state government by reducing the costs of governmental operations.

Section 3. **Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

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(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program; and

(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program.

Section 4. **Appointment and functions of advisory council.** (1) The department shall appoint an incentive awards advisory council under 2-15-122. Members of the advisory council must be selected from a diverse group to adequately represent employees.

(2) The advisory council shall meet regularly and consult with the department to review all proposed incentive awards and to recommend granting or rejecting these awards.

Section 5. **Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

Section 6. **Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an

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employee whose proposal meets the requirements enumerated in [section 5].

(2) The incentive award may not be more than 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $500. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation.

Section 7. **Termination date.** All provisions of this act shall terminate on July 1, 1983.

Approved April 29, 1981.

CHAPTER NO. 553

AN ACT TO AMEND SECTIONS 76-4-105 AND 76-4-128, MCA, TO INCREASE THE LOT FEES CHARGED FOR SERVICES RENDERED IN THE REVIEW OF SUBDIVISIONS; TO ALLOW MORE REIMBURSEMENT TO LOCAL GOVERNMENTS PERFORMING SUBDIVISION REVIEW FUNCTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed *$30* per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

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(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 2. Section 76-4-128, MCA, is amended to read:

"76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision.

(2) When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

(3) In delegating authority pursuant to this section, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than *$15* of the fee per parcel collected pursuant to 76-4-105 to the local government for the review of subdivisions containing five or fewer parcels."

Section 3. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 4. **Nonseverability.** It is the intent of the legislature that each part of this act is essentially dependent upon every other part; and if one part is held unconstitutional or invalid, all other parts are invalid.

Approved April 29, 1981.

CHAPTER NO. 554

AN ACT TO INCREASE FUNDS AVAILABLE FOR MANAGEMENT OF THE STATE'S WILDLIFE RESOURCES BY INCREASING THE FEES FOR HUNTING, FISHING, AND RELATED LICENSES AND PERMITS; REMOVING THE 7-YEAR KILL LIMITATION ON CERTAIN GAME ANIMALS; AND REMOVING THE PRIORITY STATUS FOR UNSUCCESSFUL SPECIAL ELK AND ANTELOPE LICENSE APPLICANTS; AMENDING SECTIONS 87-2-104, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-403, 87-2-501, 87-2-505, 87-2-701, 87-2-702, 87-2-705, 87-2-706, AND 87-2-903, MCA; REPEALING SECTIONS 87-2-303, 87-2-703, AND 87-2-721, MCA; AND PROVIDING SEPARATE EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed. Only one license of any one class, except Class B-3 and B-4 licenses, shall be issued to any one

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person. The department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen, or destroyed upon payment of the *original price of the lost, stolen, or destroyed license, not to exceed $5.*"

Section 2. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — stamp attachment — fee — expiration.** (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of *$2.*

(4) Licenses issued shall be void after April 30 next succeeding their issuance."

Section 3. Section 87-2-301, MCA, is amended to read:

"**87-2-301. Class A—resident fishing license.** Any resident, as defined by 87-2-102, upon payment of a fee of *$7,* shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department."

Section 4. Section 87-2-302, MCA, is amended to read:

"**87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of *$30* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department."

Section 5. Section 87-2-304, MCA, is amended to read:

"**87-2-304. Class B-4—two-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of *$4* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a *2-day* nonresident fishing license which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the department for 2 calendar *days* as indicated on the license."

Section 6. **Paddlefish tags.** The department may issue paddlefish tags to holders of valid Class A, Class B, and Class B-4 fishing licenses for a fee of $3. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

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Section 7. Section 87-2-403, MCA, is amended to read:

"87-2-403. Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license. Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be *$3*. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules."

Section 8. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6—resident deer, elk, and bear licenses. Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(1) Class A-3, deer A tag, *$8*;

(2) Class A-4, deer B tag, $5;

(3) Class A-5, elk tag, *$9*;

(4) Class A-6, black or brown bear tag, *$8*."

Section 9. Section 87-2-505, MCA, is amended to read:

"87-2-505. Class B-10—nonresident big game combination license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of *$275* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

Section 10. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $25; nonresident, *$175*;

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(b) mountain goat—resident, $15; nonresident, *$175*;

(c) mountain sheep—resident, $25; nonresident, *$175*;

(d) antelope—resident, $5; nonresident, $100;

(e) grizzly bear—resident, $25; nonresident, *$175*;

(f) black or brown bear—nonresident, $100.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department."

Section 11. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses. *(1)* A person who has received a special permit for elk is not eligible to receive a second special permit for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game animals desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations.

(2) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species."

Section 12. Section 87-2-705, MCA, is amended to read:

"87-2-705. Drawing for special elk permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. *The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.* The department may promulgate the rules necessary to implement this section."

Section 13. Section 87-2-706, MCA, is amended to read:

"87-2-706. Drawing for special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, such licenses shall be awarded by a drawing. *The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.* The department shall have the authority to promulgate such rules and regulations as are necessary to implement this section."

Section 14. **Drawing fee.** (1) When the department determines a drawing is necessary prior to issuance of hunting licenses for any game

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species during a hunting season, it shall collect a $2 per species drawing fee with each application submitted.

(2) This fee must be deposited in the earmarked revenue fund to the credit of the department as set forth in 87-1-601.

(3) The payment of a drawing fee confers no hunting rights or privileges.

(4) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304.

Section 15. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation and duties of agents. (1) License agents, except salaried employees of the department, shall receive for all services rendered the sum of *30* cents for each license, permit, or certificate issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses less a fee of *30* cents for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department."

Section 16. **Repealer.** (1) Sections 87-2-703 and 87-2-721, MCA, are repealed effective May 1, 1981.

(2) Section 87-2-303, MCA, is repealed effective May 1, 1982.

Section 17. **Codification instruction.** (1) Section 6 is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87 apply to section 6.

(2) Section 14 is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87 apply to section 14.

Section 18. **Effective date.** This act is effective as follows:

(1) Sections 2, 3, and 14 are effective May 1, 1981.

(2) Section 16 is effective as provided therein.

(3) Section 11 is effective July 1, 1981.

(4) Sections 12 and 13 are effective on passage and approval of this act.

(5) All other sections are effective May 1, 1982.

Approved April 29, 1981.

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CHAPTER NO. 555

AN ACT TO AMEND SECTIONS 50-60-101 AND 50-60-102, MCA, RELATING TO THE STATE BUILDING CODE, IN ORDER TO GENERALLY REVISE AND CLARIFY THE APPLICABILITY OF BUILDING CONSTRUCTION STANDARDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

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(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(12) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(13) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 2. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) *The state building codes do not apply to residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures. The state may not enforce the state building code under 50-60-205 for the aforementioned buildings. Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government. The state may not enforce the state building code under 50-60-205 for those buildings.*

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(3) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

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(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 556

AN ACT TO BROADEN THE COURSES OF ACTION THAT A JUDGE MAY TAKE WHEN HE DETERMINES THAT A FAIR TRIAL CANNOT BE HAD IN THE COUNTY IN WHICH THE PROSECUTION IS PENDING; AMENDING SECTION 46-13-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.

(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, it shall:

(a) transfer the cause to any other court of competent jurisdiction in any county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to insure that a fair trial may be had."

Approved April 29, 1981.

CHAPTER NO. 557

AN ACT TO BROADEN THE DISCOVERY OF WITNESSES AND DEFENSES IN CRIMINAL CASES; AMENDING SECTION 46-15-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-301, MCA, is amended to read:

"46-15-301. Discovery of witnesses, notice of certain defenses. In all criminal cases originally triable in district court, the following rules apply:

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment a list of the witnesses the prosecution intends to call. The prosecution may, any time after arraignment, add to the list the names of any additional witnesses upon a showing of good cause. The list shall include the names and addresses of the witnesses. This subsection does not apply to rebuttal witnesses.

(2) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and file with the clerk of the court, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit:

(a) a statement of intention to interpose the defense of *justifiable use of force (formerly self defense), entrapment, compulsion,* or alibi or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged*; and*

(b) *if* the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court the names and addresses of all witnesses *other than the defendant* to be called by the defense in support thereof. Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except upon good cause shown. *This subsection does not apply to rebuttal witnesses.*

(3) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court no later than 5 days before trial or at such later time as the court may for good cause permit a list of witnesses the prosecution intends to call as rebuttal witnesses to the defenses of justifiable use of force, entrapment, compulsion, alibi, or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged."

Approved April 29, 1981.

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CHAPTER NO. 558

AN ACT TO PROVIDE A STATE-CHARTERED BUILDING AND LOAN ASSOCIATION THE SAME RIGHTS AS A FEDERALLY-CHARTERED SAVINGS AND LOAN ASSOCIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Equality of rights.** With the approval of the department, a building and loan association chartered pursuant to the laws of this state may exercise or possess any right, power, privilege, benefit, immunity, or exemption possessed by a federal savings and loan association doing business in this state that is now provided or that may be provided after [the effective date of this act] by the laws of the United States or regulations of the federal home loan bank board. This grant is in addition to grants provided in, and takes priority over, any statute of this state. The department may exercise the discretion granted in this section by issuance of special order upon written request from any state-chartered building and loan association with respect to any particular item and may grant such request upon such conditions as it shall determine are in the best interest of the members or depositors of the association and of the general public. The department shall require any state-chartered building and loan association seeking such special orders to obtain and maintain insurance of accounts acceptable to the department, excluding alien insurers.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 32, chapter 2, part 1, and the provisions of Title 32, chapter 2, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 559

AN ACT TO INCREASE THE MONTHLY PAYMENTS TO VICTIMS OF SILICOSIS FROM $175 TO $200; AMENDING SECTIONS 39-73-103, 39-73-104, AND 39-73-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-73-103, MCA, is amended to read:

"39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workers' compensation is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under

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this chapter shall not exceed *$200* per month, exclusive of any grants made by congress."

Section 2. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of *$200."*

Section 3. Section 39-73-107, MCA, is amended to read:

"39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workers' compensation, been determined by the division to be entitled payment under this chapter for silicosis shall be granted a payment by the division of *$200* per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than *$200*, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and *$200* per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein."

Approved April 29, 1981.

CHAPTER NO. 560

AN ACT TO INCREASE THE ABILITY OF VICTIMS OF CRIMINAL MISCHIEF TO RECOVER RESTITUTION FROM THE OFFENDER; AND TO INCREASE TO $2,500 THE AMOUNT OF RECOVERY ALLOWED AGAINST PARENTS UNDER SECTIONS 40-6-237 AND 40-6-238, MCA; AMENDING SECTIONS 40-6-237, 40-6-238, AND 45-6-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-237, MCA, is amended to read:

"40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or

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department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed *$2,500* in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization."

Section 2. Section 40-6-238, MCA, is amended to read:

"40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed *$2,500* in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237."

Section 3. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $150, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed 10 years."

Approved April 29, 1981.

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CHAPTER NO. 561

AN ACT TO PROHIBIT SOLICITATION WITHIN OR AT THE ENTRY OF ANY POLLING PLACE; AMENDING SECTION 13-35-218, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-218, MCA, is amended to read:

"13-35-218. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person *on election day* may obstruct the doors or entries of any polling place *or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.*"

Approved April 29, 1981.

CHAPTER NO. 562

AN ACT TO ALLOW THE USE OF ANY PUBLICLY OWNED BUILDING AS A POLLING PLACE; AMENDING SECTION 13-3-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-3-105, MCA, is amended to read:

"13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than

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30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place."

Approved April 29, 1981.

CHAPTER NO. 563

AN ACT TO CREATE A PROCEDURE TO OBTAIN A VARIANCE FROM THE RULES ISSUED PURSUANT TO THE MONTANA SOLID WASTE MANAGEMENT ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Variance.** (1) Any person may apply to the board for an variance from rules adopted by the department pursuant to 75-10-204. The board may grant an variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No variance may be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act.

Approved April 29, 1981.

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CHAPTER NO. 564

AN ACT TO PROVIDE A GRADUATED SCHEDULE FOR THE TAX RATE APPLICABLE TO IMPROVEMENTS ON REAL PROPERTY FOR NEW AND EXPANDING MANUFACTURING INDUSTRY; PROVIDING FOR LOCAL GOVERNMENT APPROVAL; AMENDING SECTION 15-6-134, MCA; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;

(d) the first $35,000 or less of the market value of any improvement on real property or a trailer or mobile home used as a permanent dwelling and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple;

(e) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) *Except as provided in [section 3], property* described in subsections (1)(a) through (1)(c) is taxed at 8.55% of its market value.

(b) Property described in *subsections* (1)(d) and (1)(e) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%."

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Section 2. **Definitions.** The following definitions apply to [section 3] unless the context requires otherwise:

(1) "New or expanding" means that the manufacturing industry is new to the jurisdiction approving the resolution provided for in [section 3(2)] or that the manufacturing industry has added qualifying improvements to its property within the same jurisdiction since July 1, 1981.

(2) "Manufacturing industry" means an industry that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

Section 3. **New or expanding manufacturing industry — assessment.** (1) In the first 5 years after a construction permit is issued, improvements to real property that represent new manufacturing industry construction or expansion of an existing manufacturing industry shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by resolution, following a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of improvements that qualify for the tax treatment that is to be allowed in the taxing jurisdiction.

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body must indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

Section 4. **Effective date.** This act is effective on July 1, 1981, and applies to taxable years beginning after December 31, 1981.

Approved April 29, 1981.

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CHAPTER NO. 565

AN ACT PROVIDING FOR THE ESTABLISHMENT OF AMBIENT AIR QUALITY STANDARDS FOR FLUORIDES THROUGH LIMITATIONS UPON THE CONCENTRATION OF FLUORIDES IN FORAGE GRASSES, HAY, AND SILAGE; AMENDING SECTION 75-2-202, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-202, MCA, is amended to read:

"75-2-202. Board to set ambient air quality standards. *(1)* The board shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 566

AN ACT CREATING A FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM AND PROVIDING FOR ITS ADMINISTRATION; AMENDING SECTIONS 19-9-1007, 19-11-401, 19-11-403, 19-11-504, 19-11-512 THROUGH 19-11-514, 19-11-606, AND 19-12-301, MCA; REPEALING SECTIONS 19-11-301 THROUGH 19-11-303, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 52] may be cited as the "Montana Firefighters' Unified Retirement Act".

Section 2. **Purpose — application of prior law.** (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by [sections 1 through 52], applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

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(2) Title 19, chapter 11, may not be applied in any way to a city operating under the plan created by [sections 1 through 52] except as otherwise provided.

Section 3. **Retirement system established.** A firefighters' unified retirement system is established and governed by the provisions of [sections 1 through 52].

Section 4. **Definitions.** Unless the context requires otherwise, the following definitions apply in [sections 1 through 52]:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Board" means the retirement board described in 2-15-1009.

(3) "Credited service" means the aggregate of a member's prior service and membership service.

(4) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(5) "Employer" means any city that is of the first or second class or that elects to join this plan under [section 8].

(6) "Final average salary" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of his active service or, if he has not been a member that long, over the period of his membership.

(7) "Firefighter" means a person employed as a full- or part-paid firefighter by an employer.

(8) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(9) "Fund" means the agency account in the state treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.

(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under [sections 1 through 52] or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by [sections 1 through 52] have been made from a member's monthly compensation and credited to his member contributions account.

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Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(13) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service.

(14) "Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all newly confirmed, active firefighters employed by cities of the second class on July 1 of each year.

(15) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(16) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for his service as a firefighter.

(17) "Plan" means the municipal firefighters' retirement system created by [sections 1 through 52].

(18) "Prior plan" means the fire department relief association plan of a city that elects to join the plan under [section 8] or the fire department relief association plan of a city of the first or second class.

(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.

(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.

(21) "Retirement date" means the date on which the first payment of the retirement or disability benefits of a member or a beneficiary is payable.

(22) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter.

Section 5. **Participation in plan by first- and second-class cities.** Cities of the first and second class that employ full-paid firefighters must participate in the plan. If a city of the first or second class is

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reduced to a city of the third class or a town under 7-1-4118, it must continue to participate in the plan as long as it has retired firefighters or beneficiaries eligible to receive retirement benefits.

Section 6. **Transfer of assets and liabilities from prior plans.** All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, must be transferred to the account provided for in [section 22]. The board shall determine the amounts to be apportioned to each account on [the effective date of this section], and the department of administration and the boards of trustees of the fire department relief associations shall transfer such amounts to the appropriate accounts on July 1, 1981.

Section 7. **Effect on members of prior plans.** A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this plan retains all rights and benefits accrued under a prior plan.

Section 8. **Election to join plan — transfer of assets.** (1) Except for cities with only volunteer firefighters, a city other than one described in [section 5] may, after July 1, 1981, elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of [sections 1 through 52]. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of [sections 1 through 52] become applicable to the city. Any city that enacts such an ordinance and in which the fire department relief association passes such a resolution shall send certified copies thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by its fire department relief association. The value of the securities shall be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in [section 24].

Section 9. **Penalty for fraud.** (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine

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not exceeding $500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

Section 10. **Firemen's association to advise board.** The Montana state firemen's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of [sections 1 through 52]. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits for members of the plan.

Section 11. **Power and duties of board.** The powers and duties of the board include:

(1) administering, interpreting, and enforcing the provisions of [sections 1 through 52];

(2) establishing uniform rules to administer the provisions of [sections 1 through 52];

(3) determining the conditions under which persons may become members of and receive benefits under the retirement system; and

(4) determining allowances for retirement and disability under [sections 1 through 52].

Section 12. **Department to provide forms — information from employers.** The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer [sections 1 through 52], and the cities shall give the department of administration all data necessary to carry out the purpose and intent of [sections 1 through 52].

Section 13. **Administrative expenses.** (1) The expense of administering [sections 1 through 52], exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system account in the agency fund.

Section 14. **Active membership.** (1) A full-paid firefighter becomes an active member under the plan:

(a) on the first day of his employment by an employer;

(b) on July 1, 1981, if he is employed by an employer on that date; or

(c) in the case of an employer that elects to join the plan as provided in [section 8], on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the plan by filing a membership application with the board.

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Section 15. **Ineligibility for other retirement plans.** No active member is eligible to be covered under any other mandatory retirement plan for firefighters to which an employer is required to contribute on his behalf while he is eligible to be covered by this plan.

Section 16. **Inactive membership.** (1) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date he ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

Section 17. **Termination of employment prior to retirement.** (1) Except as provided in subsection (2), an active member may withdraw the amount of his member contributions, plus regular interest as determined by the board, in lieu of all other benefits under the plan upon his termination of employment prior to his retirement. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in [section 44].

(2) If a member has 10 years or more of creditable service before termination, he may keep his contributions on deposit and be eligible for a service retirement at age 50.

Section 18. **Cessation of membership.** A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

(2) the date of his death.

Section 19. **Credited service to be cumulative.** A member is entitled to benefits upon the entire period of his credited service without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

Section 20. **Military service.** (1) A firefighter inducted into the armed forces of the United States may:

(a) continue his payments into the account during his military service; or

(b) within 2 years after his return to active firefighter status, contribute to the account an amount equal to the membership contributions that he would have made had he been a firefighter during the time of his military service.

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(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a firefighter.

Section 21. **Election to qualify previous military service.** (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in determining eligibility for a service retirement requiring a minimum of 10 years of service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

Section 22. **Retirement account.** Beginning July 1, 1981, an account in the agency fund shall be maintained on behalf of the plan. The state treasurer is the custodian of the account subject to the exclusive administrative control of the board.

Section 23. **Management of funds by department of administration.** Except as otherwise provided in [sections 1 through 52], the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under [sections 1 through 52] according to the rules addressing the public employees' retirement system, insofar as these rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under [sections 1 through 52] may be commingled for investment purposes.

Section 24. **Unfunded liabilities.** (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in [sections 1 through 52].

(2) The administrator shall, on or before October 1, 1984, determine the excess and unfunded liability of each city participating in the plan created by [sections 1 through 52]. The determination must be negotiated between each city and the administrator. Each city determined by the

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administrator to have an excess and unfunded liability under a prior plan that, as of July 1, 1984, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by agreement between the city and the administrator.

(3) Each city determined by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under [sections 1 through 52] shall receive a credit in the accounts of the administrator for the excess payments.

(4) For each city with an unfunded liability, any portion of the member, employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability.

Section 25. **Actuarial valuation.** The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in [section 24]. A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

Section 26. **Transfer of dormant member account.** The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as an active member.

Section 27. **Member contributions.** Each employer shall retain from the monthly compensation of each active member a sum equal to 7% of his monthly compensation for his services as a firefighter and shall report and remit on a monthly basis:

(1) 6% of the monthly compensation of each member to the administrator for deposit in the fund; and

(2) 1% of the monthly compensation of each member to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

Section 28. **Vesting and withdrawal of contributions.** A member is at all times fully vested in the deductions paid to the administrator and made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with [section 17] and forfeit all rights and interest with respect to any benefits that would otherwise become payable under the plan.

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Section 29. **Redeposit of amounts withdrawn upon reinstatement.** (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions that he withdrew plus an amount equal to the interest that would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

Section 30. **State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments shall be made annually to the administrator after the end of each fiscal year but no later than September 1 from the gross premium taxes after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year, and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, and to 18% effective July 1, 1983. As soon as practicable after receipt of the state contribution, the administrator shall deposit it with the state treasurer.

Section 31. **Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, and to 18% effective July 1, 1983. All contributions are payable monthly to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

Section 32. **Taxing authority of employers.** (1) For the purpose of making contributions required of a city under [sections 1 through 52], whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

Section 33. **Other money credited as employer contributions.** All gifts, bequests, and emoluments given to an employer or member for

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the benefit of the plan or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by his employer, shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by [section 31].

Section 34. **Eligibility for service retirement.** The following members are eligible for service retirement:

(1) a member who has reached age 50 and has completed 10 years or more in the aggregate as a firefighter in any capacity or rank;

(2) a member who has reached mandatory retirement age under [section 35] regardless of his number of years of service.

Section 35. **Mandatory retirement.** (1) An active member must retire on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 65.

(2) A member who reaches mandatory retirement age may not be allowed creditable service for services rendered after the mandatory retirement date or contribute to the retirement system after this date.

Section 36. **Application for service retirement.** On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

Section 37. **Amount of retirement allowance.** (1) (a) A member hired before July 1, 1981, who is eligible under [subsection (1) of section 34] and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under [subsection (1) of section 34] and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death or

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remarriage. If there is no surviving spouse or if the surviving spouse dies or remarries and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in [section 4].

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who:

(a) is eligible under [subsection (1) of section 34] shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service;

(b) is eligible under [subsection (2) of section 34] shall receive a service retirement allowance equal to one-half his final average salary;

(c) is retired under [subsection (2) of section 34] and who was theretofore eligible at his option to be retired under [subsection (1) of section 34] but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)(a).

Section 38. **Board's determination of disability.** The board shall determine whether a member has become totally and permanently disabled. In making this determination, the board, any board member, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and shall pay compensation for those medical services and advice.

Section 39. **Eligibility for disability retirement.** If a member is determined by the board to be totally and permanently disabled, he is entitled to receive a disability retirement allowance, regardless of the length of his service, beginning the first day after the date on which he became totally and permanently disabled.

Section 40. **Amount of disability retirement allowance.** (1) A member hired before July 1, 1981, who is eligible under [section 39]:

(a) before completing 20 years of service shall receive a disability retirement allowance equal to one-half the monthly compensation last received by the member for his services as an active firefighter;

(b) after completing 20 years or more of service shall receive the disability retirement allowance provided in subsection (1)(a) increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) A member hired on or after July 1, 1981, who is eligible under [section 39]:

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(a) before completing 25 years of service shall receive a disability retirement allowance equal to one-half his final average salary;

(b) after completing 25 years or more of service shall receive the disability retirement allowance provided in subsection (2)(a) increased at a rate of 2% for each year in excess of 25, up to a maximum of 5 years of additional service.

Section 41. **Medical examination of disability retiree — cancellation of allowance.** (1) The board in its discretion may require the recipient of a disability retirement allowance to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the duties required by his position. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, his disability retirement allowance shall be canceled. The board shall notify the recipient of this determination and the cancellation of his allowance.

(2) The cancellation of a disability allowance because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit.

Section 42. **Reinstatement upon termination of allowance.** (1) (a) An inactive member whose disability retirement allowance is canceled as provided in [section 41] shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity if an appropriate vacancy exists within his fire department. The board shall advise the employer that the disability retirement allowance has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(b) If no appropriate vacancy exists within an inactive member's fire department when his disability allowance is canceled under [section 41], his allowance must be reinstated until a vacancy occurs.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under [section 41], he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

Section 43. **Payment of service or disability allowance upon death of member.** A member's service or disability allowance shall be

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paid first to the member during his lifetime and, upon his death, to his surviving spouse as long as such spouse remains unmarried. If upon a member's death he leaves no surviving spouse, or upon the death or remarriage of a surviving spouse, his allowance shall be paid to his dependent children as long as they remain dependent as defined in [section 4].

Section 44. **Survivorship allowance.** (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, receive a survivorship allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. If the member leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received as long as the children remain dependent as defined in [section 4].

(b) If the deceased member completed over 20 years of service, the survivorship allowance provided in subsection (1)(a) must be increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, receive a survivorship allowance equal to one-half of the member's final average salary. If the firefighter leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received, as long as the children remain dependent as defined in [section 4].

Section 45. **Payment of death benefits in absence of spouse or child.** If a member dies without leaving a surviving spouse or children, the administrator shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the administrator, the administrator shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate.

Section 46. **Allowance adjustment.** (1) For a member hired on or after July 1, 1973, but before July 1, 1981, and his surviving spouse or dependent children, the service retirement allowance provided in [subsection (1)(a) of section 37], the disability retirement allowance provided in [subsection (1) of section 40], and the survivorship allowance provided in [subsection (1) of section 44] may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, and his surviving spouse or dependent children, the disability retirement allowance provided in [subsection (2) of section 40] and the survivorship allowance provided

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in [subsection (2) of section 44] may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

Section 47. **Retirement allowances to be monthly and fixed.** The retirement allowances granted under the provisions of [sections 1 through 52] shall be paid in monthly installments and may not be increased or decreased, except as specifically provided in [sections 1 through 52].

Section 48. **Correction of erroneous payments.** If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

Section 49. **Exemption from taxes.** Any money received as a retirement allowance in accordance with the provisions of [sections 1 through 52] is exempt from any state or municipal tax.

Section 50. **Protection from legal process — unassignability.** The benefits payable under [sections 1 through 52] are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

Section 51. **Withholding of group insurance premium from retirement benefit.** A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the administrator and paid directly by the administrator to the insurance carrier. To qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 52. **Supplement to certain retirement allowances.** The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse and children a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. In the case of volunteer firefighters, the retirement allowance may not exceed $75 per month. Distribution of the funds provided for this purpose under 19-11-606(1) shall be made as follows:

(1) At the beginning of each fiscal year the administrator shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the administrator an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding.

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(2) The administrator shall use the funds to increase the monthly retirement allowances of the retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year.

Section 53. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments from the plan, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

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(3) The state auditor shall, upon receipt of the report referred to in subsection (2), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512*(3)* to the administrator no later than May 31 of each year. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 on or before June 30 of each year until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 54. Section 19-11-401, MCA, is amended to read:

"19-11-401. Management of association. The management of the fire department relief associations is vested in the boards of trustees, except as provided in 19-11-402 and 19-11-403."

Section 55. Section 19-11-403, MCA, is amended to read:

"19-11-403. Investment of fund by board of investments. *(1) Whenever* the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-11-402, the surplus money in the fund shall be remitted to the state treasurer for investment *under the direction of* the board of investments as is provided in *17-6-204.* The department of community affairs shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 ½ times the monthly benefit paid in the preceding month; or

(b) $5,000."

Section 56. Section 19-11-504, MCA, is amended to read:

"19-11-504. Amount of special tax levy. *Whenever* the fund contains an amount which is less than 2% of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual

special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town."

Section 57. Section 19-11-512, MCA, is amended to read:

"19-11-512. State auditor to pay association out of insurance premium taxes. *(1)* At the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection *(3)* collected by the state auditor.

(2) If the payment provided for in subsection *(1)* is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(3) The risks referred to in *subsection* (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Section 58. Section 19-11-513, MCA, is amended to read:

"19-11-513. Transfer of premium taxes to state treasury. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this chapter and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund."

Section 59. Section 19-11-514, MCA, is amended to read:

"19-11-514. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a

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warrant drawn pursuant to this chapter, to pay to the treasurer of the city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association."

Section 60. Section 19-11-606, MCA, is amended to read:

"19-11-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½ % on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section *and [section 52].* As those persons who are to receive the fund die, the tax shall be reduced proportionately, and when no eligible person, as defined by subsection (2) *and [section 52],* survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

Section 61. Section 19-12-301, MCA, is amended to read:

"19-12-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance

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against risks enumerated in 19-11-512, computed after the amounts provided for by *[section 30] and* 19-11-512 have first been deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter."

Section 62. **Repealer.** Sections 19-11-301 through 19-11-303, MCA, are repealed.

Section 63. **Effective date.** (1) Section 6 is effective on passage and approval.

(2) Sections 1 through 62, except for section 6, are effective on July 1, 1981.

Approved April 29, 1981.

CHAPTER NO. 567

AN ACT TO MODIFY EARMARKED FUNDING FOR THE CRIME VICTIMS COMPENSATION PROGRAM REQUIRING THAT FUNDING FOR THE PROGRAM BE FROM FINES AND FORFEITURES OF HIGHWAY PATROL ISSUED CITATIONS; AMENDING SECTION 53-9-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. There is a crime victims compensation account in the agency fund. There shall be paid into this account *18%* of the fines assessed and bails forfeited on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, *that are a result of citations or tickets issued by the highway patrol.*"

Approved April 29, 1981.

CHAPTER NO. 568

AN ACT TO RAISE THE VALUE OF ADVERTISING MATTER OR NOVELTIES THAT CAN BE FURNISHED TO A BEER RETAILER BY A BREWER OR WHOLESALER; AMENDING SECTION 16-3-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-241, MCA, is amended to read:

"16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers and wholesalers unlawful — exceptions. It shall be unlawful for any brewer or wholesaler to lease, furnish, give, or

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pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give, or loan to a retail licensee:

(1) bottle openers, can openers, and trays, with or without advertising matter thereon;

(2) advertising matter or novelties, of a value of not to exceed *$50 per brewery* in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(3) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(4) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."

Approved April 29, 1981.

CHAPTER NO. 569

AN ACT TO LIMIT THE MAXIMUM FEE THAT THE DEPARTMENT OF ADMINISTRATION CAN CHARGE FOR RECEIVING AND PROCESSING ELEVATOR AND ESCALATOR CONDITION REPORTS; AMENDING SECTION 50-60-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-701, MCA, is amended to read:

"50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

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(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. *The department may not charge more than $10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor; if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up by the department in that regard is necessary.*"

Approved April 29, 1981.

CHAPTER NO. 570

AN ACT TO REPEAL PROVISIONS RELATING TO WITHHOLDING FOR NONRESIDENT'S INCOME TAX; AMENDING SECTIONS 15-30-311 AND 20-15-403, MCA; REPEALING SECTIONS 15-30-221 THROUGH 15-30-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-311, MCA, is amended to read:

"**15-30-311. Levy upon and sale of property.** (1) If any tax imposed by this chapter or any portion of such tax is not paid within 60 days after the same becomes due, the department shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same found within his county for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant.

(2) The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant and, in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to

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executions issued against property upon judgments of a court of record and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department, a warrant of like terms, force, and effect may be issued and directed to any agent authorized to collect income taxes and, in the execution thereof, such agent shall have the powers conferred by law upon sheriffs but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. In the execution of such warrants, a notice of levy issued by the department's authorized agent may be served by certified mail.

(4) If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax."

Section 2. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-24-502, 15-24-505, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-115, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 40-8-124, 40-8-125, 40-8-128, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 3. **Repealer.** Sections 15-30-221 through 15-30-227, MCA, are repealed.

Approved April 29, 1981.

CHAPTER NO. 571

AN ACT TO EXEMPT CERTAIN CAPITAL GAINS AND DIVIDEND INCOME FROM PERSONAL INCOME TAX OR CORPORATE TAX FOR INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Small Business Investment Incentive Act".

Section 2. **Purpose.** The purpose of this [act] is to encourage private sector investment in venture capital firms called small business investment

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companies, which are organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana. This [act], by establishing limited tax exemptions, demonstrates a recognition by the legislature that significant incentives must be offered to attract private risk capital to manufacturing, agricultural, and timber product processing companies when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return. The legislature further recognizes the necessity of tax incentives for investors in manufacturing, agricultural, and timber product processing given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries.

Section 3. **Definition.** For the purposes of this [act], "small business investment company" or "SBIC" means a small business investment company as defined in section 103 of the federal Small Business Investment Act of 1958, as amended.

Section 4. **Reporting — recordkeeping by the department.** The chairman or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment.

Section 5. **Rulemaking authority.** The department of revenue may adopt rules necessary to carry out the provisions of this [act].

Section 6. **Capital gains — dividends exempted.** Any capital gains or dividend income realized by an individual or a corporation from an investment in an SBIC organized in accordance with this [act] is exempt from taxation under the provisions of Title 15, chapters 30 and 31.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 572

AN ACT TO GENERALLY CLARIFY AND REVISE THE LOCAL OPTION MOTOR FUEL TAX; ALLOWING THE DEPARTMENT OF REVENUE TO COLLECT THE TAX; ESTABLISHING FILING PROCEDURES FOR DISTRIBUTORS; ESTABLISHING PENALTY AND INTEREST FOR DELINQUENT TAX, ENFORCEMENT PROCEDURES, AND A STATUTE OF LIMITATIONS; AMENDING SECTIONS 7-14-301 THROUGH 7-14-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-301, MCA, is amended to read:

"7-14-301. Local option motor fuel tax authorized. (1) The people of a county by initiative may impose a motor fuel excise tax, *in*

increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline *sold to the ultimate consumer within the county* for use in motor vehicles operated upon public *highways,* streets, and roads. *The initiative must specify the tax is to be collected by the department of revenue.*

(2) *Such a motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of such an initiative.*

(3) *Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative as provided in subsection (1). When the tax is collected by the department of revenue, each distributor shall render a monthly statement to the department of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and such other information as the department may reasonably require in order to administer the motor fuel excise tax.*

(4) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

(5) The department of revenue collecting the tax authorized under subsection (1) shall establish procedures to provide a refund to a person who has paid the excise tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(6) In this part, the terms "distributor", "gasoline", "import", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201."

Section 2. Section 7-14-302, MCA, is amended to read:

"7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) *A county shall contract with the department for reimbursement of the actual costs of collection. One* percent of the motor fuel *excise* tax revenue *collected* in a county is to be reimbursed *to the distributor for the cost of compliance with this part."*

Section 3. Section 7-14-303, MCA, is amended to read:

"7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel tax. *(1)* Revenue derived from a motor fuel *excise* tax imposed by a county under 7-14-301 must be *apportioned* among the county and municipalities in the county*:*

(a) in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year*; or*

(b) as determined by an interlocal agreement.

(2) All taxes, interest, and penalties collected by the department of revenue under this part shall be promptly transmitted to the state treasurer who shall deposit such funds in an earmarked revenue fund to the

credit of the department of highways account. Such funds shall be paid quarterly by the state treasurer directly to the county in which the tax was imposed."

Section 4. Section 7-14-304, MCA, is amended to read:

"7-14-304. Lien for delinquent tax — interest and penalty — statute of limitations. *(1) The lien provisions of 15-70-211 apply to all delinquent motor fuel excise taxes, penalties, and interest due from a distributor under this part. Such a lien has the same force and effect as a lien for delinquent gasoline license tax imposed under Title 15, chapter 70, part 2.*

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery."

Approved April 29, 1981.

CHAPTER NO. 573

AN ACT REVISING THE AUDIT FEES CHARGED TO LOCAL GOVERNMENTS; CREATING A REVOLVING ACCOUNT; APPROPRIATING MONEY TO THE REVOLVING ACCOUNT; PROVIDING FOR AUDITS OF LOCAL GOVERNMENTAL ENTITIES EVERY 2 YEARS; PROVIDING FOR A PENALTY FOR NONPAYMENT OF BILLS SUBMITTED TO LOCAL GOVERNMENTS FOR AUDITING; AMENDING SECTIONS 2-7-503, 2-7-505, 2-7-506, 2-7-516, AND 20-9-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Annual audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

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(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy; *and*

(h) fire department relief associations.

(2) Each audit shall be made *every 2 years* and shall cover the immediately preceding 2 fiscal *years* of the governmental entity, *unless annual audits are requested by the governmental entity.*

(3) Each audit shall be initiated not later than *24* months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and *deposited in the revolving fund to the credit of the department.*"

Section 2. Section 2-7-505, MCA, is amended to read:

"2-7-505. Audit scope and standards. (1) Each audit shall be a comprehensive audit of the affairs of the governmental entity, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement, and any other comments deemed pertinent by the auditor, including his expression of opinion as to the adequacy of the financial presentations.

(2) Each such audit required shall be made in accordance with generally accepted governmental auditing standards."

Section 3. Section 2-7-506, MCA, is amended to read:

"2-7-506. Audit by independent accountant or auditor. (1) In lieu of the audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules shall include but not be limited to:

(a) establishment of criteria for the selection of the independent accountant/auditor;

(b) contract form and content; and

(c) standards of audit and reporting."

Section 4. Section 2-7-516, MCA, is amended to read:

"2-7-516. Audit fees. (1) The department shall charge audit fees based upon the costs incurred by the department in the *administration of this part.*

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(2) All audit fees herein provided shall be paid by the governmental entity to the state treasurer and *deposited in the revolving fund to the credit of the department.*

(3) The department may submit a bill to the governmental entity based upon the estimated percentage of completion of any audit. The governmental entity must make payment within 60 days of receiving a bill."

Section 5. Section 20-9-203, MCA, is amended to read:

"**20-9-203. Examination of district accounting records.** (1) The accounting records of all first- and second-class school districts and third-class school districts that maintain a high school shall be audited in accordance with 2-7-503.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the county superintendent and the county clerk and recorder."

Section 6. **Penalty.** When a governmental entity has failed to make payment as required by 2-15-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity.

Section 7. **Deposit of audit fees.** All audit fees received from governmental entities after June 30, 1981, shall be deposited in the revolving fund to the credit of the department of [community affairs, or if Senate Bill 432, introduced in the 47th legislature, is passed and approved, to the credit of the department of administration] for administration of Title 2, chapter 7, part 5.

Section 8. **Appropriation.** There is appropriated $157,500 from the general fund to the department of community affairs, or if Senate Bill 432, introduced in the 47th legislature, is passed and approved, to the department of administration for the purpose of meeting initial costs associated with the audits of local governmental entities.

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Section 9. **Codification.** Sections 6 and 7 are intended to be codified as an integral part of Title 2, chapter 7, part 5.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

CHAPTER NO. 574

AN ACT TO PROVIDE FOR THE DEDUCTION OF CHARITABLE CONTRIBUTIONS AND GIFTS MADE BY CORPORATIONS IN COMPUTING NET INCOME AND CORPORATE LICENSE TAX LIABILITY; AMENDING SECTION 15-31-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss

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carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of

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improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under subsection (7)."

Approved April 29, 1981.

CHAPTER NO. 575

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS OF THE STATE OF MONTANA IN ACCORDANCE WITH THE MANDATE TO THE CODE COMMISSIONER CONTAINED IN SECTION 1-11-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-101, MCA, is amended to read:

"**1-11-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

(c) substituting calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those which have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 1-1-202(7) or 3-11-101(2);

(i) changing or creating section captions (catch lines) to clearly reflect the content of the section, *unless the section captions are specifically and expressly adopted as part of the law by the legislature.*"

Section 2. Section 1-11-103, MCA, is amended to read:

"1-11-103. Effect of Montana Code Annotated. (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

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(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically *and expressly* adopted as *part of the law* by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, shall be prima facie the official laws of Montana. In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill."

Section 3. Section 2-15-132, MCA, is amended to read:

"2-15-132. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under *a reorganization within the executive branch* also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government."

Section 4. Section 2-15-133, MCA, is amended to read:

"2-15-133. Rules and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under *a reorganization within the executive branch* also succeeds to the rules and orders of that agency relating to the functions or parts of functions transferred. The rules and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law."

Section 5. Section 2-15-134, MCA, is amended to read:

"2-15-134. Legal proceedings. The transfer or abolition of an agency or function *by a reorganization within the executive branch* does not affect the validity of any judicial or administrative proceeding pending

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or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest."

Section 6. Section 2-15-135, MCA, is amended to read:

"2-15-135. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the effective date of *a* transfer of functions *by a reorganization within the executive branch*, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions."

Section 7. Section 2-15-136, MCA, is amended to read:

"2-15-136. References. Unless inconsistent with this chapter, if an agency is abolished or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred."

Section 8. Section 2-15-137, MCA, is amended to read:

"2-15-137. Federal aid. If any part of *a reorganization within the executive branch* is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of *the reorganization* has no effect and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislature again acts upon the matter."

Section 9. **Effective date.** Sections 3 through 8 are effective on passage and approval.

Section 10. Section 2-15-201, MCA, is amended to read:

"2-15-201. Powers and duties of governor. In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) He shall make the appointments and supply the vacancies as required by law.

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(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue land warrants and patents, as prescribed in 77-2-342.

(11) He shall prepare a biennial report pursuant to 2-7-102.

(12) He may require any officer or board to make special reports to him, upon demand, in writing.

(13) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(14) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state."

Section 11. Section 2-15-1606, MCA, is amended to read:

"2-15-1606. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists and one dental hygienist, all appointed by the governor. The Montana dental association and the Montana dental hygienists' association shall each present to the governor, within 15 days after its regular annual meeting, a list of not less than five candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three members of the board shall be appointed from the list of candidates submitted by the Montana dental association and one member shall be appointed from the list submitted by the Montana dental hygienists' association. Each member shall be licensed to practice *as a dentist or dental hygienist* in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

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(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 12. Section 2-17-112, MCA, is amended to read:

"2-17-112. Fire protection for state-owned buildings — department of administration — fire marshal. (1) The department of administration shall obtain information necessary to prepare a budget for *each biennium* for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire marshal. In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

(2) The state fire marshal shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102."

Section 13. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $40 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $21 per day except as provided in subsection *(3)*, plus $2 for the morning meal, $3.50 for the midday meal, and $6.50 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed $70 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $40 per day *except as provided in subsection (3)*, plus $3 for the morning meal, $5 for

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the midday meal, and $8.50 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas in the United States where the actual cost of lodging shall be reimbursed.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(6) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(8) All commercial air travel shall be by the least expensive class service available."

Section 14. Section 2-18-1011, MCA, is amended to read:

"2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or his representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of *personnel* appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable."

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Section 15. Section 3-1-206, MCA, is amended to read:

"3-1-206. Documents requiring seals. *Unless otherwise specifically required, the* seal of a court need not be affixed to any proceeding therein or document except to:

(1) a writ;

(2) the certificate of probate of a will or of the appointment of *a personal representative* or guardian;

(3) the authentication of a copy of a record or other proceeding of a court or an officer thereof or of a copy of a document on file in the office of the clerk."

Section 16. Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms. As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department *of natural resources and conservation.*"

Section 17. Section 5-2-212, MCA, is amended to read:

"5-2-212. Organization of senate. At 12 noon on the day appointed for the meeting of any regular session of the legislature, the senior member present must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers."

Section 18. Section 5-11-203, MCA, is amended to read:

"5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound, the legislative council shall distribute them.

(2) The council shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which 2 copies will be deposited with the state historical library for security purposes;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress and each *public* officer *as defined in 2-2-102,* two copies of each; and

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(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives *from* the session at which the journals were adopted, one copy of each.

(3) The council shall distribute the session laws as follows:

(a) to each department of the *executive branch of the United States, agency, commission, conference, or corporation established by the United States government, or any other subdivision thereof upon request and approval by the legislative council,* one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the library and such additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers, *as defined in 2-2-102(8),* one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives *from* the session at which the laws were adopted, one copy;

(i) to each of the *community college districts* of the state, *as defined in 20-15-101,* and each unit of the Montana university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

Section 19. Section 7-1-4137, MCA, is amended to read:

"7-1-4137. Oath of office. Every elected municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. The oath of office, certified by the official before whom the same was taken, shall be filed with the county election administrator before the officer exercises any official duties."

Section 20. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

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(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 21. Section 7-3-141, MCA, is amended to read:

"7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing form of municipal government may:

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(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter; or

(d) recommend disincorporation."

Section 22. Section 7-3-151, MCA, is amended to read:

"7-3-151. Treatment of suboptions for alternative forms. (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body."

Section 23. Section 7-3-158, MCA, is amended to read:

"7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced."

Section 24. Section 7-4-2501, MCA, is amended to read:

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"7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries."

Section 25. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution. (1) The county governing body shall by resolution, on or before July 1, 1979, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and county attorney; the clerk of the district court; the county auditor (if there is one); the county surveyor (if he receives a salary); and the county coroner; however, the salary of the elected county official for fiscal year 1980 must be the greater of the amount computed by increasing the salary authorized for that official on June 30, 1979, by 7% or by using the salary schedule in 7-4-2503.

(2) The county governing body shall by resolution, on or before July 1, 1980, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and county attorney; the clerk of the district court; the county auditor (if there is one); the county surveyor (if he receives a salary); and the county coroner for the following fiscal year by increasing the salary authorized for that official on June 30, 1980, by 7%."

Section 26. Section 7-4-2611, MCA, is amended to read:

"7-4-2611. Role and duties of county clerk. (1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records which may be filed or deposited in his office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the same to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

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(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board thereon;

(i) record all orders levying taxes;

(j) designate upon every account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record in his office or any account on file therein;

(k) as often as a new township is organized or the boundaries of any township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries and the boundaries of any township altered;

(l) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of campaign finances and practices.

(4) A county clerk and recorder shall make statements and other information filed *under the provisions of Title 13, chapters 35, 36, and 37, in* his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost."

Section 27. Section 7-4-4107, MCA, is amended to read:

"7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in *January* after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment."

Section 28. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest. (1) Unless otherwise provided, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city, or town to whose credit such funds are deposited.

(2) All interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under *Title 7, chapter 33, part 21 or 23,* must be credited to the account of that fire district or department."

Section 29. Section 7-6-2301, MCA, is amended to read:

"7-6-2301. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof."

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Section 30. Section 7-6-2302, MCA, is amended to read:

"7-6-2302. Role of department of community affairs. The department of community affairs shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information."

Section 31. Section 7-6-2303, MCA, is amended to read:

"7-6-2303. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor."

Section 32. **Codification instruction.** Sections 7-6-2351 and 7-6-2352, MCA, (sec. 1(2), (3), and sec. 2, Ch. 692, L. 1979), are intended to be an integral part of Title 7, chapter 6, part 23, and the provisions of Title 7, chapter 6, part 23, apply to sections 7-6-2351 and 7-6-2352, MCA.

Section 33. Section 7-6-2604, MCA, is amended to read:

"7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon "Not paid for want of funds", annexing the date of presentation, and sign his name thereto. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest, distinct from the principal.

(2) From and after the date of presentation and endorsement by the treasurer, the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury", from and after the date of such presentation and endorsement shall draw interest at the rate fixed by the *board of* county *commissioners* in accordance with law."

Section 34. Section 7-12-4175, MCA, is amended to read:

"7-12-4175. Offstreet parking option — ordinance setting forth method of assessment required — hearing. (1) Before any improvement district *for the establishment or improvement of offstreet parking* can be created or financed under 7-12-4165, the city council or commission must, prior to the creation of *the* district, pass a city ordinance setting forth the formula to be used in determining the assessment of each lot or parcel within *the* district. The formula must include but *is* not limited to the items to be considered in 7-12-4165.

(2) Prior to the adoption of any such ordinance, the council or commission shall make a determination of the formula for the method of assessment, considering all of the factors above set forth. *A* public hearing, after due notice, *shall be held wherein concerned* persons may present their

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objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time.

(3) After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance."

Section 35. Section 7-32-4116, MCA, is amended to read:

"7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this *section* and not on the actual current salary."

Section 36. Section 7-32-4120, MCA, is amended to read:

"7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report. (1) Any city or town not governed by the provisions of *chapter 9 or chapter 10 of Title 19* shall only expend the payment received pursuant to 19-10-305 for police training or to purchase pensions for members of its police department.

(2) The city treasurer or town clerk of such cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305."

Section 37. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) Every fire company organized pursuant to *7-33-2311* must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties."

Section 38. Section 7-3-4222, MCA, is amended to read:

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"**7-3-4222. Adoption of ordinances.** (1) Every ordinance or resolution appropriating money, ordering any street improvement or sewer, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption thereof.

(2) No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety which contains a statement of its urgency and is passed by a two-thirds vote of the council, shall go into effect before 10 days from the time of its final passage. If during *the 10-day period* a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, *is* presented to the council, the *ordinance* shall thereupon be suspended from going into operation and the council *shall* reconsider *the* ordinance. *If* the *ordinance* is not entirely repealed, the council shall submit the ordinance to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose. *The* ordinance shall not go into effect or become operative unless a majority of the electors voting on the *ordinance* vote in favor *of its adoption.*"

Section 39. Section 7-3-4310, MCA, is amended to read:

"**7-3-4310. Special election for municipal officers.** (1) If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within 1 week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled. This order shall specify the time of holding such election, which must be within 90 days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such municipality if there be such; otherwise, for 2 successive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

(2) Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

(3) The provisions of *7-3-4341* are to be followed in the special election, except that the date of the primary election shall be at least 30 days before the special election."

Section 40. Section 7-7-4427, MCA, is amended to read:

"**7-7-4427. Special election on question of issuing bonds.** *(1)* When the governing body has chosen to submit the question of issuing

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bonds to the electorate, the special election shall be noticed and conducted as provided *for municipal general obligation bonds in chapter 7, part 42.*

(2) The special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part and ordered said special election."

Section 41. Section 7-13-2225, MCA, is amended to read:

"7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. *If* the elections are combined, *the* notice of the election *shall contain* the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2235 through 7-13-2248."

Section 42. Section 7-13-2235, MCA, is amended to read:

"7-13-2235. Election and appointment procedure. The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director by *a* mayor or *a* board of county commissioners shall be as provided in *this part.*"

Section 43. Section 7-13-2243, MCA, is amended to read:

"7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the election administrator to perform satisfactorily and promptly the duties imposed by *this part.*"

Section 44. Section 7-13-2246, MCA, is amended to read:

"7-13-2246. Withdrawal of candidacy. (1) Any individual *who has been nominated* as a candidate may, not later than 30 days before the day of election, cause his name to be withdrawn from nomination by filing with the election administrator a request therefor in writing, and no name withdrawn may be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than 30 days prior to the election."

Section 45. Section 7-13-4321, MCA, is amended to read:

"7-13-4321. Water and sewer revenue bonds authorized. Any municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized to do so by a majority vote of the qualified electors

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voting on the question at an election called by the city council or other governing body of the municipality for that purpose. *The election shall be* noticed in accordance with the provisions of 7-7-4227 *and conducted in accordance with the provisions of chapter 7, part 42, governing elections on municipal general obligation bonds.*"

Section 46. Section 7-15-4218, MCA, is amended to read:

"7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions *governing municipal general obligation bonds under chapter 7, part 42,* at the same election and shall be approved by a majority of those qualified electors voting on such question."

Section 47. Section 7-34-2414, MCA, is amended to read:

"7-34-2414. Election required on question of issuance of bonds. (1) No bonds may be issued by any county until the question of approval of the issuance of such bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by *the laws governing the election on county general obligation bonds in chapter 7, part 22.*

(2) If a majority of the electors voting thereon vote against the issuance of the bonds, the county shall have no authority to issue the bonds under 7-34-2411 through 7-34-2418."

Section 48. Section 13-2-402, MCA, is amended to read:

"13-2-402. Other reasons for cancellation. The election administrator shall cancel the registration of any elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

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(6) if an elector is successfully challenged and not allowed to vote at an election *upon determination of an election judge*; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 49. Section 13-16-203, MCA, is amended to read:

"13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, *as provided in 13-15-405(4)* or *the* secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law."

Section 50. Section 13-16-205, MCA, is amended to read:

"13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. *Recount expenses* of the secretary of state and board of *state* canvassers are a state charge."

Section 51. Section 13-16-414, MCA, is amended to read:

"13-16-414. Recount of votes cast by voting devices. (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls."

Section 52. Section 13-16-419, MCA, is amended to read:

"13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of *state* canvassers, and shall notify the members.

(2) The board of *state* canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

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(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated."

Section 53. Section 13-25-204, MCA, is amended to read:

"13-25-204. Certificates issued by governor. Upon receipt of the *report of the canvass* required by *13-15-507*, the governor shall send a certificate of election to each person elected."

Section 54. Section 13-27-502, MCA, is amended to read:

"13-27-502. Preparation of ballots by county officials. Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by *13-12-207*, 13-12-212, and 13-17-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the official ballot as prescribed by *13-12-207*, 13-12-212, and 13-17-206."

Section 55. Section 13-27-503, MCA, is amended to read:

"13-27-503. Determination of result of election. The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of *state* canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor."

Section 56. Section 13-35-208, MCA, is amended to read:

"13-35-208. Deceiving an elector. A person who deceives an elector voting under *13-13-118 or 13-13-119* is guilty of a misdemeanor."

Section 57. Section 13-35-217, MCA, is amended to read:

"13-35-217. Officers not to influence voter. No officer, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire."

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Section 58. Section 13-36-102, MCA, is amended to read:

"13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed."

Section 59. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;

(d) the first $35,000 or less of the market value of any improvement on real property or a trailer or mobile home used as a permanent dwelling and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources *including otherwise tax exempt income of all types* is not more than *$8,000* for a single person or *$10,000* for a married couple;

(e) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

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(2) Class four property is taxed as follows:

(a) Property described in subsections (1)(a) through (1)(c) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(d) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	*Income Married Couple*	*Percentage Multiplier*
$0 - $1,000	*$0 - $1,000*	*0%*
1,001 - 2,000	*1,001 - 2,000*	*10%*
2,001 - 2,800	*2,001 - 3,000*	*20%*
2,801 - 3,600	*3,001 - 4,000*	*30%*
3,601 - 4,400	*4,001 - 5,000*	*40%*
4,401 - 5,200	*5,001 - 6,000*	*50%*
5,201 - 6,000	*6,001 - 7,000*	*60%*
6,001 - 6,800	*7,001 - 8,000*	*70%*
6,801 - 7,600	*8,001 - 9,000*	*80%*
7,601 - 8,000	*9,001 - 10,000*	*90%*

(c) Property described in subsection (1)(e) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%."

Section 60. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The *department of health and environmental sciences'* determination as to air *and water* pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

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(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 61. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) livestock, poultry, and unprocessed products of both;

(b) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(c) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(d) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by *noncentrally* assessed public utilities; and tools used in the repair and maintenance of this property; and

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(e) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 ¼ miles.

(3) Class seven property is taxed at 8% of its market value."

Section 62. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) motorcycles;

(e) watercraft;

(f) light utility and boat trailers;

(g) aircraft;

(h) all-terrain vehicles;

(i) harness, saddlery, and other tack equipment; and

(j) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 63. Section 15-6-139, MCA, is amended to read:

"15-6-139. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) automobiles, buses, and trucks weighing 1 ½ tons or less;

(b) stock trailers;

(c) truck toppers weighing more than 300 pounds;

(d) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(e) x-ray and medical and dental equipment; and

(f) citizens' band radios and mobile telephones.

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(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value."

Section 64. Section 15-6-140, MCA, is amended to read:

"15-6-140. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) coal and ore haulers;

(d) trucks weighing more than 1 ½ tons, including those prorated under 15-24-102;

(e) trailers, except those included in classes eight or nine, including those prorated under 15-24-102, *and except those subject to a fee in lieu of property tax*;

(f) theater projectors and sound equipment; and

(g) all other property not included in the preceding nine classes, *except that property subject to a fee in lieu of a property tax.*

(2) Class ten property is taxed at 16% of its market value."

Section 65. Section 15-6-151, MCA, is amended to read:

"15-6-151. Application for certain class four classifications. (1) A person applying for classification of property described in subsection (1)(d) of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

(b) his retirement benefits;

(c) his marital status;

(d) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(e) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

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Section 66. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in subsection (1)(a) of 15-6-131 and 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in subsection (1)(a) of 15-6-131 and classes four through *eleven* is the percentage of market value established for each class of property in subsection (2)(a) of 15-6-131 and 15-6-134 through 15-6-141.

(5) The assessed value of properties in subsection (1)(b) of 15-6-131, 15-6-132, and 15-6-133 is as follows:

(a) Properties in subsection (1)(b) of 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in subsection (1)(b) of 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2)(b), 15-6-132, and 15-6-133 for each class of property."

Section 67. Section 15-18-303, MCA, is amended to read:

"15-18-303. Lis pendens to be filed. Upon the filing of the complaint, a notice of the pendency of said action shall be recorded in the office of the county clerk and recorder of the county in which the action

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is pending, and the lis pendens so recorded shall be filed with the clerk of the court and shall become a part of the *judicial record* of said action."

Section 68. Section 15-24-931, MCA, is amended to read:

"15-24-931. Assessment of swine. (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the preceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for *barrows and gilts,* grades 1 to 3, at *230* to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows, *grades 1 to 2,* at *300 to 350* pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the *Administrative Rules of Montana.*"

Section 69. Section 15-31-523, MCA, is amended to read:

"15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied hereunder is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation, it shall thereupon forfeit its rights to do intrastate business in this state. Provided that if any domestic corporation shall fail for a period of 5 consecutive years to either file a return or to pay the corporation license tax, the department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days from and after the mailing of such notice. If such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said 60-day period, the department shall certify this fact to the secretary of state, and upon

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receipt of such certificate, the corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

(2) The department shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture, or dissolution herein provided for shall become effective immediately *when* such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture, or dissolution."

Section 70. Section 16-4-107, MCA, is amended to read:

"16-4-107. Winery and importer registration. Any winery or importer of table wines which holds the appropriate license from the United States of America and which desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require such winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and such other information as the department may determine to be necessary to assure *that* importation and distribution of table wines within this state conform to the requirements of *this title*. No winery or importer of table wines shall ship table wines into this state until such registration is granted by the department; and such registration may be cancelled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration."

Section 71. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the plan and who were receiving payments from a prior plan

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before July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments from the plan, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The state auditor shall, upon receipt of the report referred to in subsection (2), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512*(6)* to the administrator no later than May 31 of each year. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 on or before June 30 of each year until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 72. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

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(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of *Title 20, chapter 4*;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

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(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 73. Section 20-3-331, MCA, is amended to read:

"20-3-331. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of 2-9-104 shall apply to the provisions of this section."

Section 74. Section 20-5-101, MCA, is amended to read:

"20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may, at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older *if there are exceptional circumstances that merit waiving the age provision of this section.*"

Section 75. Section 20-6-621, MCA, is amended to read:

"20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes, but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election shall be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of such site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the *department* of health and environmental sciences of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of administration.

(4) The board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in such district."

Section 76. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community

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college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-30-221, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-115, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 40-8-124, 40-8-125, 40-8-128, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 77. Section 20-20-421, MCA, is amended to read:

"20-20-421. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district, such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of *chapter* 17 of Title 13. In construing the provisions of *that chapter*, the "county governing body" and the "election administrator" shall, for the purposes of this section, be considered to refer to trustees and "county" shall be considered to refer to district."

Section 78. Section 20-25-511, MCA, is amended to read:

"20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety, and privacy of a person's residence and the privacy of his records. Intrusions by *peace officers* and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records."

Section 79. Section 25-1-102, MCA, is amended to read:

"25-1-102. Limitations on commencing actions. (1) Civil actions can only be commenced within the periods prescribed in *Title 27, chapter 2*, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

(2) The word "action", as used in this section, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature."

Section 80. Section 25-1-201, MCA, is amended to read:

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"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $20; and for filing a complaint in intervention, from the intervenor, $20;

(b) from each defendant or respondent, on his appearance, $10;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, *$25*;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) *Except as provided in subsection (3), 40%* of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license, $9 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404."

Section 81. **Coordination with other bill.** If Senate Bill No. 121 which bill would generally amend the fees of the clerk of district court, including those fees specified in section 80, is passed and approved, the amendments in subsections (1) through (3) of section 80 are void and of no effect.

Section 82. Section 25-1-301, MCA, is amended to read:

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"25-1-301. Extension of time. *Subject to Rule 6(b), M.R.Civ.P., whenever this code requires or allows* an act to be done *at or within a specified time, which act* relates to the pleadings in the action, the undertakings to be filed, the justification of sureties, the preparation of statements or of amendments thereto, or the service of notices other than of appeal, the time allowed by this code may be extended, upon good cause shown, by the court in which the action is pending or a judge thereof; but such extension shall not exceed 90 days without the consent of the adverse party."

Section 83. Section 25-3-201, MCA, is amended to read:

"25-3-201. Delivery of papers to officer. (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) *If the* papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff or other officer refuse to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding $100."

Section 84. Section 25-3-301, MCA, is amended to read:

"25-3-301. Time and manner of return. (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

(2) When process or *a notice is* returnable to another county *or was forwarded under 25-3-201,* the sheriff may enclose *his return of* such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage."

Section 85. Section 25-3-402, MCA, is amended to read:

"25-3-402. Persons to be served. *Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever* a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk *of court* for him. But in all cases where a party has an attorney in the action or proceeding, the service

of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring him into contempt, *unless the court orders otherwise.*"

Section 86. Section 25-3-504, MCA, is amended to read:

"25-3-504. Designating unknown persons as defendants. (1) In *the situations listed in Rule 4D(5)(a), M.R.Civ.P.*, persons whose names are unknown to plaintiff may be made parties defendant, either on the filing of the complaint, cross complaint, or complaint in intervention, as the case may be, or at any time thereafter by amendment thereof, by the name and description of unknown owners, unknown heirs, or unknown devisees of any deceased person or by all of such designations.

(2) (a) When persons are made parties defendant by the designation of unknown owners, it shall not be necessary to add to such designation in the title of the action a description of the property involved, whether real, personal, or mixed, of which such persons are claimed or supposed to be unknown owners or claimants or parties in interest, but a description of the property involved shall be included in the body of the summons for publication in the action.

(b) When persons are made defendant by the style and description of unknown heirs *or devisees*, there shall be added to such designation of them the name of the deceased person of whom they shall be claimed or supposed to be the heirs *or devisees.*"

Section 87. Section 25-3-505, MCA, is amended to read:

"25-3-505. Effect of service by publication upon unknown persons. Judgments and decrees rendered in actions or proceedings when persons have been so made parties and served by publication of summons shall have the effect *prescribed in Rule 4D(5)(b), M.R.Civ.P.* If *such* persons are made parties by the designation of:

(1) unknown heirs, the judgment or decree shall be conclusive as to all heirs of such deceased party;

(2) unknown devisees, the judgment or decree in such proceedings shall be conclusive as against all devisees of such deceased person;

(3) unknown owners, the judgment or decree rendered in such action or proceeding shall be conclusive as against the world, including *persons with* contingent interests in the controversy and persons not in being who may have an interest or contingent interest therein."

Section 88. Section 25-4-101, MCA, is amended to read:

"25-4-101. Motions and orders when judge absent or disqualified. (1) Motions must be made in the county in which the action is brought or in any adjoining county in the same district. In case of the absence of the judge of the district from his district or in an action pending in which such judge is disqualified to act, such motion may be made before the judge of any adjoining district *unless* there is another judge in the same district who is not disqualified to act, in which case such motion shall be made before another judge in the same district.

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(2) Orders made out of court may be made by the judge of the court in any part of the state."

Section 89. Section 25-4-204, MCA, is amended to read:

"25-4-204. Time for amendment or reply after motion on pleading. When a motion *concerning a* pleading is sustained or overruled and time to amend, answer, or reply is given, the time so given runs from service of notice of the decision or order, except when the party against whom the decision is made is in court. In such case the time runs from the making of the decision or order."

Section 90. Section 25-4-503, MCA, is amended to read:

"25-4-503. Postponement on other grounds. Upon good cause shown and in furtherance of justice, *the court may, in its discretion,* postpone a trial or proceeding upon other grounds than the absence of evidence *under such conditions as the court may direct.*"

Section 91. Section 25-4-602, MCA, is amended to read:

"25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract where the complaint demands judgment for a sum of money only, if the defendant by his answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer."

Section 92. Section 25-7-102, MCA, is amended to read:

"25-7-102. Issues of law to be decided by court. *Except as provided in Article II, section 7, of the Montana constitution, all* questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the court unless they are referred upon consent, and all discussions of law are to be addressed to the court."

Section 93. Section 25-7-205, MCA, is amended to read:

"25-7-205. Persons drawn and approved to form jury. The first 12 persons, *or such other number as will constitute the jury,* who appear, as their names are drawn and called, and are approved as indifferent between the parties and not discharged or excused must be sworn and constitute the jury to try the issue."

Section 94. Section 25-7-223, MCA, is amended to read:

"25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) *being the spouse of or related to a party by* consanguinity or affinity within the sixth degree;

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(3) standing in the relation of guardian and ward, debtor and creditor, employer and *employee*, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely by reason of current bills of gas, water, electricity, or telephone.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party."

Section 95. Section 25-7-224, MCA, is amended to read:

"25-7-224. Peremptory challenges to jurors. (1) Each party is entitled to four peremptory challenges, except as provided for under subsection (2).

(2) *When* a six-person jury is authorized by law, each side shall have two peremptory challenges. *When the parties agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in open court, with the approval of the court, upon the number of peremptory challenges to be allowed, not to exceed four.*

(3) Peremptory challenges shall be *taken as provided in Rule 47(b) M.R.Civ.P.*"

Section 96. Section 25-7-301, MCA, is amended to read:

"25-7-301. Order of trial. When the jury has been sworn, the trial shall proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party *who has* the burden of *proof* may briefly state his case and the evidence by which he expects to sustain it.

(2) The adverse party may then, or at the opening of his case, briefly state his defense and the evidence he expects to offer in support of it.

(3) The party *who has* the burden of *proof shall* first produce his evidence; the adverse party will then produce his evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are passed upon and settled at such settlement. In charging

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the jury, the court shall give to it all matters of law which the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case."

Section 97. Section 25-7-304, MCA, is amended to read:

"25-7-304. Procedure when a juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, *subject to the provisions of Rule 47(c), M.R.Civ.P.,* the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury then or afterward impaneled."

Section 98. Section 25-9-201, MCA, is amended to read:

"25-9-201. Whose rights determined in judgment. *Subject to the provisions of Rule 54(b), M.R.Civ.P., judgment* may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and it may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves."

Section 99. Section 25-10-202, MCA, is amended to read:

"25-10-202. Costs of motion. *Whenever* a motion is sustained or overruled, the losing party must pay to the other $10 as costs. If a motion *is* withdrawn before the hearing, it *must* be *considered* overruled."

Section 100. Section 25-10-205, MCA, is amended to read:

"25-10-205. Costs of securing witnesses — substitution of judge. *Whenever a motion for substitution of a judge is filed* after the action or proceeding is set for trial or hearing, the party filing the *motion* shall pay to the opposite party all costs necessarily incurred in securing the attendance of witnesses between the date the order was made fixing the day of hearing or trial and the time the *motion* was filed, and such costs so paid *are* not recoverable in the action or proceeding."

Section 101. Section 25-11-102, MCA, is amended to read:

"25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial;

(5) excessive damages appearing to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application."

Section 102. Section 25-11-103, MCA, is amended to read:

"25-11-103. Grounds after trial by the court. No new trial *may* be granted in cases tried by the court without a jury, except on the grounds mentioned in subsections (1), (3), and (4) of 25-11-102."

Section 103. Section 25-11-104, MCA, is amended to read:

"25-11-104. How motion for new trial made. (1) Motions for new trials shall be made as follows:

(a) For causes mentioned in 25-11-102(1), the motion shall be made on affidavits or on the minutes of the court.

(b) For causes mentioned in subsection (2), (3), *or* (4) of 25-11-102, the motion shall be made only on affidavits.

(c) For causes mentioned in subsection (5), (6), or (7) of 25-11-102, the motion shall be made only on the minutes of the court.

(2) The official stenographic reports of the trial may be referred to as a part of the minutes of the court."

Section 104. Section 25-13-104, MCA, is amended to read:

"25-13-104. Compelling contribution or repayment — joint debtor, surety. (1) When property liable to an execution against several persons is sold thereon and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several and is upon an obligation of one of them as *surety* for another and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

(2) In such case, the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10

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days after his payment, he file with the clerk of the court where judgment was rendered notice of his payment and claim to contribution or repayment. Upon the filing of such notice, the clerk must make an entry thereof in the margin of the docket."

Section 105. Section 25-13-301, MCA, is amended to read:

"25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff;

(c) intelligibly refer to the judgment, stating the court, *and* the county where *it was entered* and, if it *is* for money, the amount thereof and the amount actually due thereon; and

(d) require the sheriff to act substantially as provided in this part.

(2) In executions, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent."

Section 106. Section 25-13-304, MCA, is amended to read:

"25-13-304. Execution against property of judgment debtor. If the writ be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property *as provided in 25-13-305.*"

Section 107. Section 25-13-404, MCA, is amended to read:

"25-13-404. Return of the execution. The execution may be made returnable, at any time not less than 10 or more than 60 days after its receipt by the sheriff, to the clerk *of the court in which* the judgment *was rendered.*"

Section 108. Section 25-14-101, MCA, is amended to read:

"25-14-101. Debtor to answer concerning his property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or, if he does not reside in this state, to the sheriff of the county where the judgment is *docketed*, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from a judge of the court requiring such judgment debtor to appear and answer concerning his property before such judge or a referee appointed by him at a time and place specified in the order; but no judgment debtor *who is a resident may* be required to attend before a judge or referee out of the county in which he resides."

Section 109. Section 25-14-202, MCA, is amended to read:

"25-14-202. Order appointing receiver to be filed. An order appointing a receiver must be filed in the office of the clerk of the court

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where the judgment is *docketed* or a transcript of the *original docket is filed.*"

Section 110. Section 25-14-305, MCA, is amended to read:

"25-14-305. Interrogatories directed to prisoner by plaintiff. The plaintiff in the action may, upon such examination, propose to the prisoner any such interrogatories pertinent to the inquiry; and they must, if required by *the plaintiff,* be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner."

Section 111. Section 25-30-101, MCA, is amended to read:

"25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, 3-10-305, 3-10-306, *and* 3-10-704 through 3-10-706*;* 25-31-102(2), 25-31-114 through 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-915, 25-31-1002, 25-31-1004, and 25-31-1005), *and* chapter 33 of this title*; and* chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, *and the supreme court's rules on disqualification of judges,* the proceedings and practice in municipal court shall be the same as in district court."

Section 112. Section 25-31-102, MCA, is amended to read:

"25-31-102. Transfer to district court — dismissal. (1) If it appear from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice must suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the same from his docket to the clerk of the district court of the county. *From* the time of *the certification of* such pleadings or transcript *to* the clerk, the district court shall have over the action the same jurisdiction as if it had been commenced therein. When the action is certified to the district court, upon the answer of the defendant, he must file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to it. If the issue is not severable, the justice shall dismiss the entire action."

Section 113. Section 25-31-111, MCA, is amended to read:

"25-31-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices'

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courts or which have been made applicable by special provisions in this chapter *and Titles* 3 *and* 27 are applicable to justices' courts and the proceedings therein."

Section 114. Section 25-31-115, MCA, is amended to read:

"25-31-115. Deposit of money in lieu of undertaking. In civil cases arising in justices' courts wherein an undertaking is required *by this chapter*, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount required by said undertaking, which said sum of money shall be taken as security in place of said undertaking."

Section 115. Section 25-31-301, MCA, is amended to read:

"25-31-301. When change of venue permitted. The court may, at any time before trial, on motion, change the place of trial in the following cases:

(1) when it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party;

(2) when a jury has been demanded and either party makes and files an affidavit that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the county, town, or city against him;

(3) when, from any cause, the justice is disqualified from acting, *except when supreme court rule prohibits the justice from acting to change the place of trial*;

(4) when the justice is sick or unable to act."

Section 116. Section 25-31-308, MCA, is amended to read:

"25-31-308. Notice of the time and place of trial — pleading. Upon the receipt by him of such papers, the justice of the court to which the case is transferred must issue a notice stating when and where the trial will take place, which notice must be served upon the parties at least a day before the time fixed for trial. If no answer has been made by the defendant, he must be allowed to plead."

Section 117. Section 25-31-408, MCA, is amended to read:

"25-31-408. Who may serve summons — method of service, return. (1) The summons may be served by a sheriff or constable of any of the counties of this state or by any person resident in the state, 18 years of age or older, not a party to the suit.

(2) The summons must be served and returned as provided in M.R.Civ.P., Rule 4D (2), (4), (8), and (9), or by publication *as* provided in M.R.Civ.P., Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

(3) Sections 25-3-201(2), 25-3-202 through 25-3-206, 25-3-301(2), 25-3-302, and 25-10-206 and part 6 of chapter 3 apply to service and return of process in justice's court."

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Section 118. Section 25-31-501, MCA, is amended to read:

"25-31-501. Form of pleadings. Pleadings in justices' courts:

(1) are not required to be in any particular form but must be such as to enable a person of common understanding to know what is intended;

(2) may, except the complaint, be oral or in writing;

(3) *need* not be verified unless otherwise provided in this chapter *or* Title 27;

(4) if in writing, must be filed with the justice;

(5) if oral, an entry of their substance must be made in the docket;

(6) in cases of forcible entry and unlawful detainer, must be verified."

Section 119. Section 25-31-506, MCA, is amended to read:

"25-31-506. Compulsory counterclaim. If the defendant omits to set up a counterclaim in the cases mentioned in 25-31-505, neither he nor his assignee can afterward maintain an action against the plaintiff therefor. If the counterclaim exceeds *$1,500*, he need not set it up."

Section 120. **Coordination.** If Senate Bill 468 is passed and approved amending 25-31-506 to increase the maximum jurisdictional amount in justice courts, the amendment in section 120 or such other section of this act amending 25-31-506 is void and of no effect.

Section 121. Section 25-31-521, MCA, is amended to read:

"25-31-521. Amendment of pleadings. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue *is raised at trial* and it appears to the satisfaction of the court, *upon hearing the argument of the adverse party under* oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. When an adjournment will be rendered necessary by the amendment, the court may also, in its discretion, require as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding $20."

Section 122. Section 25-31-602, MCA, is amended to read:

"25-31-602. When guardian necessary — how appointed. When *a minor or seriously mentally ill* or incompetent person is a party, he must appear either by his general guardian, if he *has* one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, he must be appointed as follows:

(1) If the *minor or seriously mentally ill* or incompetent person *is a* plaintiff, the appointment must be made before the summons is issued:

(a) *in the case of a minor who is 14 or more years old,* upon the application of the *minor*;

(b) *in the case of a minor who is less than 14 years old* or *a seriously mentally ill or* incompetent *person*, upon the application of a relative or friend;

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(c) in any case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the *minor or seriously mentally ill* or incompetent person *is a* defendant, the appointment must be made at the time the summons is returned or before the answer:

(a) *in the case of a minor who is* 14 *or more* years *old* and *who applies* before the summons is returned *or at the time of the return, upon the application of the minor;*

(b) *in the case of a minor who is less than* 14 years *old* or *a seriously mentally ill* or incompetent *person,* upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion."

Section 123. Section 25-31-709, MCA, is amended to read:

"**25-31-709. Time limit on adjournment — undertaking.** No adjournment *may* be granted *upon the application of either party* for a period longer than 10 days *unless the opposite party consents or the* party *applying files* an undertaking, in an amount fixed by the justice, with two sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking."

Section 124. Section 25-31-802, MCA, is amended to read:

"**25-31-802. When issues of fact arise.** An issue of fact arises:

(1) *whenever* a material allegation in the complaint *is* controverted by the answer; and

(2) *whenever the answer contains* new matter *which raises questions of fact and not merely* an issue of law."

Section 125. Section 25-31-901, MCA, is amended to read:

"**25-31-901. Procedure upon default.** If the defendant fails to appear *or* answer within the time specified in the summons, then the defendant shall be in default and his default shall be entered accordingly by the court. Evidence may then be submitted and judgment rendered and entered in accordance with the statement in the summons or as prayed for in the complaint at any time within 90 days from the date of the entry of such default of the defendant."

Section 126. Section 25-31-1101, MCA, is amended to read:

"**25-31-1101. When justice may issue execution.** Execution for the enforcement of a judgment of a justice's court may be issued by the *clerk* who entered the judgment or his successor in office, on the application of the party entitled thereto, at any time within *6* years from the entry of judgment."

Section 127. Section 25-33-104, MCA, is amended to read:

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"25-33-104. Papers to be transmitted. Upon *the filing of* the notice of appeal and *the* undertaking as required in 25-33-201, 25-33-203, and 25-33-205, the justice or judge must, within 10 days, upon the payment of the fees therefor, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; and the justice or judge may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice or judge by the party or his attorney."

Section 128. Section 25-33-201, MCA, is amended to read:

"25-33-201. Undertaking on appeal. (1) An appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(2) An appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against him in said action in the district court and obey any order made by the court therein.

(3) When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon; and

(b) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof or he will pay any judgment and costs that may be recovered against him in said action in the district court, not exceeding a sum to be fixed by the justice *or judge* of the court from which the appeal is to be taken, which sum must be specified in the undertaking."

Section 129. Section 25-33-205, MCA, is amended to read:

"25-33-205. Deposit of money in lieu of undertaking. *Whenever* an undertaking is required on appeal by the provisions of this chapter,

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a deposit in the court below of the amount of the judgment appealed from *plus* $300 *or, if the judgment is for the recovery of specific personal property, the value of the property plus $300 or, if the party in whose favor the judgment is rendered appeals, $100 is* equivalent to filing the undertaking. *The justice or judge shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.*"

Section 130. Section 25-34-203, MCA, is amended to read:

"25-34-203. Order of court directing defendant to pay or answer claim. (1) Upon *the* filing *of* the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit or deliver up the property described or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed *plus* costs; and

(c) be signed by the clerk of court and bear the seal of the court."

Section 131. Section 25-34-403, MCA, is amended to read:

"25-34-403. Appeals. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county *in which* the judgment was rendered in *accordance with the procedure prescribed in chapter 33.* Any such appeal *must* be tried de novo.

(2) In the event that the parties are represented by counsel on appeal, the judge may grant the prevailing party, in addition to costs, reasonable attorney fees."

Section 132. Section 27-25-203, MCA, is amended to read:

"27-25-203. Stay of proceedings. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge; but if omitted, the power of the inferior *tribunal, board,* or officer is not suspended or the proceedings stayed."

Section 133. Section 30-12-105, MCA, is amended to read:

"30-12-105. Use of metric sizes in sale of commodities — department to make rules. Notwithstanding any other provision, metric sizes as defined by the department *of business regulation* by rule will be permitted, provided there is compliance with all labeling requirements of the state of Montana."

Section 134. Section 30-13-202, MCA, is amended to read:

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"**30-13-202. Registration of assumed business name similar to reserved or registered name or mark prohibited.** When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership *name*, trademark, or service mark registered *or reserved* with the secretary of state, the secretary of state may not register the assumed business name for which application is made."

Section 135. Section 30-14-203, MCA, is amended to read:

"**30-14-203. Persons responsible.** Any person who, either as director, officer, or agent of any *business* or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person, or *business* for whom or which he acts."

Section 136. Section 30-14-204, MCA, is amended to read:

"**30-14-204. Proof of intent.** In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, or *business* for whom or which he acts."

Section 137. Section 30-14-223, MCA, is amended to read:

"**30-14-223. Department to institute suit.** Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 by any *business*, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such *business* and to permanently enjoin it from transacting business in this state. If in such action the court finds that the *business* is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the *business* from doing business in this state permanently or for such time as the court orders or shall annul the charter or revoke the franchise of such *business*."

Section 138. Section 30-14-502, MCA, is amended to read:

"**30-14-502. Definitions.** As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents, and the identity or kinds of goods or services offered for sale;

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(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller."

Section 139. Section 32-1-205, MCA, is amended to read:

"32-1-205. Board rules for discovery and hearing procedures. (1) The board shall, *under rules adopted by it,* permit prehearing discovery procedures, including the taking of depositions and the production of documents. *The* rules of civil procedure for state courts shall furnish guidelines for *such rules.*

(2) In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths."

Section 140. **Terminology change.** In Title 33, chapter 10, parts 1 and 2, "conservation" means "supervision". The code commissioner is authorized and instructed to change all references to "conservation" in Title 33, chapter 10, parts 1 and 2, to "supervision".

Section 141. **Reference change.** In Title 33, "Title 33, chapter 2, part 9" means "Title 33, chapter 2, part 13". The code commissioner is authorized and instructed to change all references to Title 33, chapter 2, part 9, to Title 33, chapter 2, part 13, within Title 33.

Section 142. Section 33-2-1103, MCA, is amended to read:

"33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this *part*, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 5% of such insurer's assets or 50% of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the

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acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer shall include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(e) invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this *part* applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after

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such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this *part* and the insurer has notified the commissioner thereof."

Section 143. Section 33-2-1345, MCA, is amended to read:

"33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for him under this part and determine his reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) employ agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing and in connection therewith require the production of any books, papers, records, or other documents which he considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts;

(ii) do such other acts as are necessary to collect, conserve, or protect its assets or property, *including selling, compounding, compromising or assigning debts for collection purposes on* such terms and conditions as he considers best; and

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(iii) pursue any creditor's remedies available to enforce his claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into such contracts as are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit,

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the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated or otherwise provided for as may be necessary for the accomplishment of or in aid of the purpose of liquidation."

Section 144. Section 33-2-1382, MCA, is amended to read:

"33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the *county clerk and* recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

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(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state."

Section 145. Section 33-4-403, MCA, is amended to read:

"**33-4-403. Investments.** (1) When so directed by a majority vote of its members present at a duly called and held meeting of members, the directors of a farm mutual insurer shall have power to invest the insurer's funds or any part thereof in any of the following:

(a) bonds or other securities issued by the United States government or by any agency thereof;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency thereof;

(c) general obligation bonds or warrants of any state, county, or city, when recommended by the commissioner and approved by the *department of community affairs*;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3) below.

(2) At the time of making any such investment the document evidencing the same must be stamped with the name of the insurer with the following notation printed or written thereon: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) No real estate loan shall be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. No such loan shall be for a term longer than 10 years. The foregoing provisions shall not be deemed to prevent the renewal or extension of loans already made and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans which are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of such loans; nor shall such provisions be deemed to prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors such subsequent liens are necessary further to secure the payment of any debts and save the insurer from loss."

Section 146. Section 33-6-402, MCA, is amended to read:

"**33-6-402. Agents — license.** Agents for any benevolent association may be appointed in accordance with chapter 17 and shall be subject to

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the applicable provisions of such chapter, except as provided in 33-6-403. No such agent may be appointed if there are less than three officers in charge of the association."

Section 147. Section 33-15-103, MCA, is amended to read:

"33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body, or health or any contract such minor effected upon his own property, liabilities, or other interests or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2) above is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums except as and when consented to by the guardian and approved by the *district* court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under 33-15-201."

Section 148. Section 33-15-201, MCA, is amended to read:

"33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual

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insured, the individual insured or his *personal representative* may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual."

Section 149. Section 33-20-101, MCA, is amended to read:

"33-20-101. Scope. Parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities."

Section 150. Section 33-20-115, MCA, is amended to read:

"33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the *personal representative* of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy."

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Section 151. Section 33-20-1001, MCA, is amended to read:

"33-20-1001. Group contracts required to meet group requirements. (1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in 33-20-1101 through *33-20-1106* and unless in compliance with the other applicable provisions of parts 10 through 12 of this chapter.

(2) Subsection (1) above shall not apply to life insurance policies insuring only individuals:

(a) related by blood, marriage, or legal adoption;

(b) having a common interest through ownership of a business enterprise or a substantial legal interest or equity therein and who are actively engaged in the management thereof; or

(c) otherwise having an insurable interest in each other's lives."

Section 152. Section 35-1-928, MCA, is amended to read:

"35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any *application for a* certificate of *withdrawal* by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana."

Section 153. Section 35-2-711, MCA, is amended to read:

"35-2-711. Power of court to liquidate assets and affairs of corporation — venue. (1) *The* assets and affairs of a corporation *may be liquidated*:

(a) in an action by a member or director when it is made to appear:

(i) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and either that the members are unable to break the deadlock or there are no members having voting rights;

(ii) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) that the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

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(iv) that the corporate assets are being misapplied or wasted; or

(v) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor:

(i) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(ii) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs is necessary;

(e) upon filing a verified petition and/or application by a member, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

(2) Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally."

Section 154. Section 35-4-201, MCA, is amended to read:

"35-4-201. Advertising prohibited. Every corporation organized under this chapter is prohibited from advertising the professional services rendered by the members of said corporation."

Section 155. Section 35-11-201, MCA, is amended to read:

"35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to *35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979,* entering in alphabetical order the name of every such partnership and of each partner therein."

Section 156. Section 35-11-202, MCA, is amended to read:

"35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by him and affidavits of publication *pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979,* made

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by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated."

Section 157. Section 35-17-204, MCA, is amended to read:

"35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the *secretary of state*, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation."

Section 158. Section 35-17-504, MCA, is amended to read:

"35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located."

Section 159. Section 35-17-505, MCA, is amended to read:

"35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. *The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.* In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

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(3) No right of any creditor may be impaired by the merger or consolidation without his consent."

Section 160. Section 35-21-216, MCA, is amended to read:

"35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such other person as the mausoleum-columbarium authority designates has the authority of a *peace* officer for the purpose of maintaining order, enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he has charge and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property."

Section 161. Section 35-21-405, MCA, is amended to read:

"35-21-405. Filed plat and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the *dedication of the* property to interment purposes."

Section 162. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is licensed as a licensed public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under

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37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which he is generally known in *his* country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or

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37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner."

Section 163. Section 37-50-303, MCA, is amended to read:

"37-50-303. Public accountants — licensure — qualifications and requirements. Licensure as a public accountant is available to any person who:

(1) is a citizen of the United States or has declared his intention of becoming a citizen;

(2) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state;

(3) is of good moral character;

(4) meets the requirements of education set forth in *this chapter*; and

(5) complies with the qualifications and requirements in any one of the subsections of 37-50-304."

Section 164. Section 37-61-419, MCA, is amended to read:

"37-61-419. Attorney not to become surety on bond. *(1) Without the consent of the district court judge who had first approved the security, no* attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail."

Section 165. Section 39-34-101, MCA, is amended to read:

"39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board *of personnel appeals* for final and binding arbitration."

Section 166. Section 39-34-102, MCA, is amended to read:

"39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board *of personnel appeals* shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list."

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Section 167. Section 39-34-103, MCA, is amended to read:

"39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board *of personnel appeals* and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body."

Section 168. Section 39-51-1213, MCA, is amended to read:

"39-51-1213. Classification of employers for experience rating purposes. (1) The division shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of July 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below for the calendar year 1980 and for each calendar year thereafter:

(a) Each employer is given an "experience factor" which is contributions paid minus benefits charged on each employer's account since July 1, 1976, divided by his average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

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(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of *39-51-1214*.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years."

Section 169. Section 40-3-127, MCA, is amended to read:

"40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect on. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, *declaration of invalidity*, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings

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for dissolution, *declaration of invalidity*, or separate maintenance. The pendency of a dissolution, *declaration of invalidity*, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, *declaration of invalidity*, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or *declaration of invalidity* of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter."

Section 170. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed *or* the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

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ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The child's guardian is .....

The child is in the custody of .....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

.....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

Section 171. Section 45-9-108, MCA, is amended to read:

"45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacists to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of *pharmacists* shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose."

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Section 172. Section 46-30-401, MCA, is amended to read:

"46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the *governor* indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition."

Section 173. Section 50-60-204, MCA, is amended to read:

"50-60-204. Public hearing required. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

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(2) If a hearing has been held by the state fire marshal with respect to his duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required."

Section 174. Section 53-1-202, MCA, is amended to read:

"53-1-202. Institutions in department. (1) The following institutions are in the department:

(a) Galen state hospital;

(b) Montana veterans' home;

(c) State prison;

(d) Mountain View school;

(e) Pine Hills school;

(f) Boulder River school and hospital;

(g) Warm Springs state hospital;

(h) Montana center for the aged;

(i) Swan River youth forest camp;

(j) Eastmont training center;

(k) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 175. Section 53-4-401, MCA, is amended to read:

"53-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22."

Section 176. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

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(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment *facilities* as provided for in 53-24-208;

(b) prepare an annual state plan for the delivery of treatment services;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to alcoholics;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of alcoholism and drug dependence counselors;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services; and

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions."

Section 177. Section 53-30-204, MCA, is amended to read:

"53-30-204. Contracts for services with governing body of Indian reservation. The department of institutions may contract with the governing body of an Indian reservation within the state for residential and educational services at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of chapter 1."

Section 178. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to *61-6-143* or has previously posted an indemnity bond with the *division of motor vehicles* as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable as provided in 61-3-601."

Section 179. Section 67-11-303, MCA, is amended to read:

"67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may

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determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy

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a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, *as provided for municipal general obligation bonds in chapter 7, part 42,* for an election called by cities and towns, and *as provided for county general obligation bonds in chapter 7, part 22,* for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above."

Section 180. Section 69-11-109, MCA, is amended to read:

"69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) No provisions of the laws of this state prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property free or at reduced rates for the United States, for state or municipal governments, or for charitable institutions; property which is being transported to or from fairs and expositions for exhibit thereat; or cars used by the government of the United States or the state for the transportation of fish and from carrying free or at reduced rates agents and employees employed in such transportation; and nothing therein contained prevents such person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)*(q)*, it shall only be issued upon the application of the secretary of state and the transportation or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor. The secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

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(3) The carrying free or at reduced rates of property or persons in any of the classes above specified shall be held to be a reasonable classification by common carriers for such purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases above specified is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty therefor."

Section 181. Section 70-19-413, MCA, is amended to read:

"70-19-413. Certain disabilities to suspend running of statutory period. (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession thereof or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time such title first descends or accrues:

(a) under the age of majority;

(b) seriously mentally ill; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense, but such action may be commenced or entry or defense made within the period of 5 years after such disability ceases or after the death of the person entitled who dies under such disability, but such action may not be commenced or entry or defense made after that period."

Section 182. Section 70-28-104, MCA, is amended to read:

"70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether such claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff shall desire to obtain a complete adjudication of the title to the real estate described in the complaint, he may name as defendants all known persons who assert or who might assert any claim as in this section above specified and may join as defendants all persons unknown who might make any such claim by adding in the caption of the complaint in such action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent"."

Section 183. Section 70-28-206, MCA, is amended to read:

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"70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the same his affidavit fully and explicitly setting forth and showing:

(a) the character of his estate, right, title, interest, or claim in the property;

(b) whether or not he has ever made any conveyance of his interest in said property or any part thereof and, if so, when and to whom; also a statement of any and all existing mortgages, deeds of trust, judgments, or other liens thereon;

(c) when and where the deceased entryman of said property died;

(d) what kin or relationship the claimant bore to the entryman at the time of his death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of said action, and the names of and residences of all persons who have liens upon the property or any part thereof adversely to the plaintiff if he knows or has been informed or has been able to discover any such person.

(2) If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show fully and explicitly the reasons for such inability.

(3) Such affidavit shall constitute a part of the *judicial record.*

(4) If the plaintiff be a person under guardianship, the affidavit shall be made by his guardian."

Section 184. Section 70-28-215, MCA, is amended to read:

"70-28-215. Judgment — nature and effect — recording. (1) The judgment shall ascertain and determine the heirship of said deceased entryman and all estates, rights, titles, interests, and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consists of mortgages or liens of any description, and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to said property or any part thereof and upon every person claiming under him by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in such action shall be recorded in the office of the clerk and recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may at his option file for record in the office of the clerk and recorder of such county the entire *judicial record* in said action."

Section 185. Section 72-16-331, MCA, is amended to read:

"72-16-331. Definitions for alternate valuation purposes. As used in 72-16-331 through 72-16-342, the following definitions apply:

(1) "Adjusted value" means:

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(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-342, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-342, reduced by the amount of unpaid mortgages and indebtedness.

(2) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not he is in possession, in any property designated in such agreement consenting to the application of *72-16-333* with respect to such property.

(3) "Department" means the department of revenue.

(4) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(5) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(6) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(7) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

(8) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code.

(9) "Member of the family" means, with respect to any individual, only the individual's ancestor or lineal descendant, a lineal descendant of a grandparent of the individual, the spouse of the individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual is treated as a child of the individual by blood.

(10) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property

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passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(11) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of (a)(ii) and (c) of this subsection;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business; and

(d) the real property is designated in the agreement referred to in subsection (2) of this section.

(12) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) of the Internal Revenue Code for the purpose of replacing the qualified real property.

(b) "Qualified replacement property" only includes property that is to be used for the qualified use set forth in (a) or (b) of subsection (13) of this section under which the qualified real property qualified under 72-16-333.

(13) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection (11)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use."

Section 186. Section 76-3-612, MCA, is amended to read:

"76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town."

Section 187. Section 80-3-110, MCA, is amended to read:

"80-3-110. Rules for enforcement — fees. The department may adopt rules necessary for the enforcement of this *part*. The department may adopt rules to establish fees for inspection under this *part*."

Section 188. Section 80-7-210, MCA, is amended to read:

"80-7-210. Penalty. A person who violates this *part* is guilty of a misdemeanor and shall be fined not less than $25 or more than $300."

Section 189. Section 82-1-203, MCA, is amended to read:

"82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that said lease or abstract of such lease be released of record. Such demand must be written. When written, a copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original."

Section 190. Section 82-1-303, MCA, is amended to read:

"82-1-303. No further liability for petitioner. If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the *unlocatable* owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust."

Section 191. Section 82-4-103, MCA, is amended to read:

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"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context the following definitions apply:

(1) "Board" means the board of land commissioners as provided for in Article X, section 4, of the constitution of this state.

(2) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land which the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized."

Section 192. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state or any person having an interest which is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty

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it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest which is or may be adversely affected may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued hereunder. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part *or* any rule, order, or permit issued hereunder. Any person may intervene as a matter of right in any such civil action. Nothing in this section restricts any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted hereunder or to seek any other relief.

(4) Any person who is injured in his person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages (including reasonable attorney and expert witness fees) only in the county in which the strip or underground-coal-mining operation complained of is located. Nothing in this subsection affects the rights established by or limits imposed under chapter 71 of Title 39.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 193. Section 82-4-306, MCA, is amended to read:

"82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained

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from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under *an* operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by the department or by judicial order. Failure to comply with the secrecy provisions of this part shall be punishable by a fine of up to $1,000."

Section 194. Section 85-8-624, MCA, is amended to read:

"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in 85-8-303.

(b) The manner of conducting the election shall be as provided in 85-8-304 *and as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration may be required.*

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and give them notice as provided in 85-8-303.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and shall include the summary as part of the notice provided for by 85-8-303. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

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(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Section 195. **Repealer.** (1) Sections 2-15-1643 and 2-15-1656, MCA, are repealed.

(2) Section 13-27-309, MCA, is repealed.

(3) Section 20-5-315, MCA, is repealed.

(4) Sections 25-1-111 and 25-7-210, MCA, are repealed.

(5) Title 37, chapters 52 and 70, MCA, are repealed.

(6) Section 72-11-334, MCA, is repealed.

(7) Subsection (5) of section 11-4305, R.C.M. 1947, is repealed.

(8) Section 59-1007, R.C.M. 1947, is repealed.

(9) Sections 82-2206 through 82-2208, R.C.M. 1947, are repealed.

Approved May 1, 1981.

CHAPTER NO. 576

AN ACT TO INCREASE THE INTEREST FOR DELINQUENT PROPERTY TAX PAYMENT FROM ⅔ OF 1 PERCENT PER MONTH TO 5/6 OF 1 PERCENT PER MONTH FOR THE FIRST $3,000 PER TAXPAYER OF EACH YEAR'S DELINQUENT TAXES AND 1 PERCENT PER MONTH FOR EACH YEAR'S DELINQUENT TAXES IN EXCESS OF $3,000 PER TAXPAYER; AMENDING SECTIONS 15-16-101, 15-16-102, AND 15-17-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter and that unless paid prior thereto the amount then due will be delinquent and:

(i) will draw interest at the rate of:

(A) 5/6 of 1% per month from and after such delinquency on the first $3,000 per taxpayer of each year's tax delinquency; and

(B) 1% per month from and after such delinquency *on each year's tax delinquency in excess of $3,000 per taxpayer;* and

(ii) 2% will be added to the *delinquent taxes* as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to said date said taxes will be delinquent and:

(i) will draw interest at the rate of:

(A) 5/6 of 1% per month from and after such delinquency on the first $3,000 per taxpayer of each year's tax delinquency; and

(B) 1% per month from and after such delinquency *on each year's tax delinquency in excess of $3,000 per taxpayer;* and

(ii) 2% will be added to the *delinquent taxes* as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) the number of the school district in which the property is located; and

(e) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The notice in every case must be published for 2 weeks in some weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax."

Section 2. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, except on municipal special improvement district bonds sold on or before July 1, 1979, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and:

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(a) shall draw interest at the rate of:

(i) 5/6 of 1% per month from and after each delinquency on the first $3,000 per taxpayer of each year's tax delinquency until paid; and

(ii) 1% per month from and after such delinquency until paid *on each year's tax delinquency in excess of $3,000 per taxpayer;* and

(b) 2% shall be added to the *delinquent taxes* as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and:

(a) shall draw interest at the rate of:

(i) 5/6 of 1% per month from and after such delinquency on the first $3,000 per taxpayer of each year's tax delinquency until paid; and

(ii) 1% per month from and after such delinquency until paid *on each year's tax delinquency in excess of $3,000 per taxpayer;* and

(b) 2% shall be added to the *delinquent taxes* as a penalty."

Section 3. Section 15-17-303, MCA, is amended to read:

"15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of *5/6 of* 1% per month *on the first $3,000 per taxpayer of each year's delinquent taxes and 1% per month on each year's delinquent taxes in excess of $3,000 per taxpayer* and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ...., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ...., 19.., for the purpose of liquidating assessment, the following described parcel of land, situate in the county of ...., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ...., and the same still remaining unredeemed, and on this day .... having paid into the treasury of such county the amount for which the same was bid, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars.

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right,

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title, and interest of the county of ...., state of Montana, acquired in such lands under and by virtue of the sale to ...., his heirs and assigns forever, together with all the rights, powers, and privileges of the county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...

..... (County Treasurer)"

(2) If the certificate described in subsection (1) becomes lost by accident or destroyed by the assignee, the county treasurer shall issue a duplicate certificate to the assignee after the county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued by March 5, 1917, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at tax sale may now have.

(4) As to any land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged."

Section 4. **Applicability.** This act applies to taxes assessed and levied after December 31, 1980.

Approved May 1, 1981.

CHAPTER NO. 577

AN ACT TO EXTEND THE AUTHORITY OF THE STATE BOARD OF EXAMINERS, UPON RECOMMENDATION OF THE DEPARTMENT OF ADMINISTRATION, TO ISSUE AND SELL NOTES IN ANTICIPATION OF TAXES AND REVENUES APPROPRIATED FOR EXPENDITURE DURING A FISCAL YEAR; PROVIDING THAT THE FULL FAITH AND CREDIT AND TAXING POWER OF THE STATE SHALL BE PLEDGED FOR THE PAYMENT OF ALL NOTES; AND PROVIDING THAT THE ACT IS EFFECTIVE ON PASSAGE BY A TWO-THIRDS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE AND APPROVAL BY THE GOVERNOR; AMENDING SECTIONS 17-1-202 AND 17-1-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-202, MCA, is amended to read:

"17-1-202. Limitation on amount of notes. *No* more than $50 million of notes *issued under 17-1-201* may be outstanding at any time."

Section 2. Section 17-1-204, MCA, is amended to read:

"17-1-204. Payment — pledge of taxes and revenue. (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) *The full faith and credit and taxing power of the state shall be pledged for the payment of all notes issued under this part."*

Section 3. **Effective date — two-thirds vote required.** This act is effective on passage by a two-thirds vote of the members of each house of the legislature and approval by the governor.

Approved May 1, 1981.

CHAPTER NO. 578

AN ACT SPECIFYING THE BASIS FOR ASSESSING AGRICULTURAL MACHINERY, TRUCKS, AND OTHER MOTOR VEHICLES; AMENDING SECTIONS 15-1-101 AND 15-8-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

(f) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches", exceeding 8 feet in width or 32

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feet in length, designed to be moved from one place to another by an independent power connected to them.

(g) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(h) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(i) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(j) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(k) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) *(a)* Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

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(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in subsection (1)(a) of 15-6-131 and 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in subsection (1)(a) of 15-6-131 and classes four through ten [class twenty, and class twenty-one] is the percentage of market value established for each class of property in subsection (2)(a) of 15-6-131 and 15-6-134 through 15-6-141 [and 15-6-121].

(5) The assessed value of properties in subsection (1)(b) of 15-6-131, 15-6-132, and 15-6-133 is as follows:

(a) Properties in subsection (1)(b) of 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in subsection (1)(b) of 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2)(b), 15-6-132, and 15-6-133 [and 15-6-120] for each class of property."

Approved May 1, 1981.

CHAPTER NO. 579

AN ACT REGULATING CONVERSIONS OF GROUP LIFE INSURANCE AND GROUP DISABILITY INSURANCE AND PROVIDING FOR CONTINUATION OF GROUP COVERAGE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 33-20-1209 AND 33-20-1210, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-1209, MCA, is amended to read:

"33-20-1209. Conversion on termination of eligibility. *(1)* The group life insurance policy shall contain a provision that if the insurance

or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance, provided application for the individual policy shall be made and the first premium paid to the insurer within 31 days after such termination, and provided further that:

(a) the individual policy shall, at the option of such person, be on any one of the forms, *including but not limited to* term insurance, *if the group policy so provides,* then customarily issued by the insurer at the age and for the amount applied for *and shall offer benefits at least equal to those under the group coverage*;

(b) the individual policy shall, *at the option of the insured,* be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is *insured* under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue his coverage under the group policy during his employment notwithstanding reduction of his regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage shall be equal to that charged other members of the group. Such person's coverage under the group will cease if he subsequently becomes eligible for coverage under another group policy because of employment elsewhere."

Section 2. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least *3* years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy *may* not exceed the smaller of:

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(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; and

(2) *$10,000.*"

Section 3. **Continuing group coverage after termination.** A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged other members of the group of the same risk class.

Section 4. **Conversion on termination of eligibility.** (1) A group disability insurance policy issued or renewed after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, or as a result of his employer discontinuing his business, such person shall, provided he had been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy, at the option of the insured, shall be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those policies whose eligibility is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy.

Section 5. **Continuing group coverage after termination.** A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged the members of the group.

Section 6. **Conversion on termination of eligibility.** The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his

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employment or of his membership in the class or classes eligible for coverage under the policy or as a result of an employer discontinuing his business, such person shall, provided he has been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(1) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(2) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy.

Section 7. **Preexisting conditions.** The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract.

Section 8. **Insured's family — conversion entitlement.** Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

Section 9. **Applicability.** Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

Section 10. **Codification instruction.** Sections 3 through 9 shall apply only to disability insurers and health service corporations.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains

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in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective July 1, 1981.

Approved May 1, 1981.

CHAPTER NO. 580

AN ACT TO ESTABLISH STANDARDS FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Insurance Information and Privacy Protection Act".

Section 2. **Purpose.** The purpose of [this act] is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

Section 3. **Scope of [act].** (1) The obligations imposed by [this act] apply to those insurance institutions, agents, or insurance-support organizations that, on or after [the effective date of this act]:

(a) in the case of life, health, or disability insurance:

(i) collect, receive, or maintain information in connection with insurance transactions that pertains to natural persons who are residents of this state; or

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(ii) engage in insurance transactions with applicants, individuals, or policyholders who are residents of this state; and

(b) in the case of property or casualty insurance:

(i) collect, receive, or maintain information in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; or

(ii) engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(2) The rights granted by [this act] extend to:

(a) in the case of life, health, or disability insurance, the following persons who are residents of this state:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions; and

(b) in the case of property or casualty insurance, the following persons:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(3) For the purposes of this section, a person is considered a resident of this state if the person's last-known mailing address, as shown in the records of the insurance institution, agent, or insurance-support organization, is located in this state.

(4) [This act] does not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

Section 4. **Definitions.** As used in [this act], the following definitions apply:

(1) (a) "Adverse underwriting decision" means:

(i) any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(A) a declination of insurance coverage;

(B) a termination of insurance coverage;

(C) failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant;

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(D) in the case of a property or casualty insurance coverage:

(I) placement by an insurance institution or agent of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution which specializes in substandard risks; or

(II) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(E) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis; or

(ii) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Agent" means an agent or enrollment representative as defined in 33-17-102 and 33-30-311.

(4) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(5) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction.

(6) "Consumer reporting agency" means any person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(7) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise,

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unless the power is the result of an official position with or corporate office held by the person.

(8) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(9) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to [this act].

(10) "Institutional source" means a person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than:

(a) an agent;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(11) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101. "Insurance institution" does not include agents or insurance-support organizations.

(12) (a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of [this act]: agents, government institutions, insurance institutions, medical care institutions, and medical professionals.

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(13) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion thereof containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

(15) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(16) "Medical professional" means a person licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech therapist.

(17) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(20) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

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(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone he is not;

(b) pretends to represent a person he is not in fact representing;

(c) misrepresents the true purpose of the interview; or

(d) refuses to identify himself upon request.

(22) "Privileged information" means any individually identifiable information that:

(a) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection will be considered "personal information" under [this act] if it is disclosed in violation of [section 15].

(23) "Residual market mechanism" means an association, organization, or other entity defined or described in 33-8-103 and 61-6-144.

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state.

Section 5. **Pretext interviews prohibited — exception.** (1) Except as provided in subsection (2), an insurance institution, agent, or insurance-support organization may not use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction.

(2) A pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim when based upon specific information available for review by the commissioner that there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

Section 6. **Notice of insurance information practices.** (1) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

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(a) in the case of an application for insurance, a notice shall be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice is required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice is required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), (13), and (15) of [section 15] and the circumstances under which such disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under [sections 10 and 11] and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization;

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(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

Section 7. **Marketing and research surveys.** An insurance institution or agent shall clearly specify the questions that are designed to obtain information from an individual in connection with an insurance transaction solely for marketing or research purposes.

Section 8. **Content and disclosure of authorization forms.** Notwithstanding any other provision of law of this state, an insurance institution, agent, or insurance-support organization may not utilize as its disclosure authorization form in connection with insurance transactions a form or statement that authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance-support organization unless the form or statement:

(1) is written in plain language;

(2) is dated;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time such authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

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(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

Section 9. **Investigative consumer reports.** (1) An insurance institution, agent, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or agent informs the individual:

(a) that he may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to [section 10], he is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or agent desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interview, if requested.

Section 10. **Access to recorded personal information.** (1) If an individual, after proper identification, submits a written request to an insurance institution, agent, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent, or insurance-support organization, the insurance institution, agent, or insurance-support organization shall, within 30 business days from the date such request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, agent, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent, or insurance-support organization has disclosed the personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance

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institutions, agents, insurance-support organizations, or other persons to whom such information is normally disclosed; and

(d) provide the individual with a summary of the procedures he may use to request correction, amendment, or deletion of recorded personal information.

(2) Personal information provided pursuant to subsection (1) must identify the source of the information if such source is an institutional source.

(3) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, agent, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and at the request of the affected individual shall consult with the affected individual.

(4) Except for personal information provided under [section 12], an insurance institution, agent, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(5) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, agent, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(6) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(7) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

Section 11. **Correction, amendment, or deletion of recorded personal information.** (1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend, or delete

any recorded personal information in its possession about the individual, an insurance institution, agent, or insurance-support organization shall either:

(a) correct, amend, or delete the portion of the recorded personal information in dispute; or

(b) notify the individual of:

(i) its refusal to make such correction, amendment, or deletion;

(ii) the reasons for the refusal; and

(iii) the individual's right to file a statement as provided in subsection (3).

(2) If the insurance institution, agent, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance institution, agent, or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment, or fact of deletion to:

(a) any person specifically designated by the individual who may have, within the preceding 2 years, received such recorded personal information;

(b) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding 7 years, but the correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(c) any insurance-support organization that furnished the personal information which has been corrected, amended, or deleted.

(3) Whenever an individual disagrees with an insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual may file with the insurance institution, agent, or insurance-support organization:

(a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and

(b) a concise statement of the reasons why the individual disagrees with the insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.

(4) If an individual files either statement described in subsection (3), the insurance institution, agent, or insurance-support organization shall:

(a) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of individual's statement and have access to it;

(b) in any subsequent disclosure by the insurance institution, agent, or insurance-support organization of the recorded personal information that is

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the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(c) furnish the statement to the persons in the manner specified in subsection (2).

(5) The rights granted individuals by this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or insurance-support organization in connection with an insurance transaction. The rights granted to natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(6) For the purposes of this section, the term "insurance-support organization" does not include consumer reporting agency.

Section 12. **Reasons for adverse underwriting decisions.** (1) If an adverse underwriting decision is made, the insurance institution or agent responsible for the decision shall:

(a) either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he may receive the specific reason or reasons in writing; and

(b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (2) and [sections 10 and 11].

(2) If a written request is received within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance institution or agent shall within 21 business days from the date of receipt of the written request furnish the person:

(a) the specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (1)(a);

(b) the specific items of personal and privileged information that support those reasons; however:

(i) the insurance institution or agent is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(ii) specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care

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with respect to the condition to which the information relates, whichever the insurance institution or agent prefers; and

(c) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (2)(b), except that the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or agent prefers.

(3) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(4) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (1) may be given orally.

Section 13. **Information concerning previous adverse underwriting decisions.** An insurance institution, agent, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual; or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

Section 14. **Previous adverse underwriting decisions.** An insurance institution or agent may not base an adverse underwriting decision in whole or in part:

(1) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism, but an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision;

(2) on personal information received from an insurance-support organization whose primary source of information is insurance institutions, but an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

Section 15. **Disclosure limitations and conditions.** (1) Except as provided in this section, an insurance institution, agent, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

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(a) if the authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization must meet the requirements of [section 8]; or

(b) if the authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; and

(iii) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:

(a) to enable such person to perform a business, professional, or insurance function for the disclosing insurance institution, agent, or insurance-support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(i) would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or

(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization; or

(b) to enable such person to provide information to the disclosing insurance institution, agent, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, agent, insurance-support organization, or self-insurer if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, agent, or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

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(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority.

(7) Disclosure may be made to a law enforcement or other government authority:

(a) to protect the interests of the insurance institution, agent, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, agent, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure may be made as otherwise permitted or required by law.

(9) Disclosure may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) Disclosure may be made for the purpose of conducting actuarial or research studies, provided:

(a) no individual may be identified in any actuarial or research report;

(b) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(c) the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, agent, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization.

(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:

(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of

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living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.

(13) Disclosure may be made to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(14) Disclosure may be made by a consumer reporting agency to a person other than an insurance institution or agent.

(15) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(16) Disclosure may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

(17) Disclosure may be made to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(18) Disclosure may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

Section 16. **Power of the commissioner.** (1) The commissioner has the power to examine and investigate the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of [this act].

(2) The commissioner has the power to examine and investigate the affairs of every insurance-support organization acting on behalf of an insurance institution or agent that either transacts business in this state or transacts business outside this state which has an effect on a person residing in this state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of [this act].

Section 17. **Hearings.** The commissioner shall hold a hearing whenever he has reason to believe that an insurance institution, agent, or insurance-support organization has been or is engaged in conduct in this state that violates [this act] or if the commissioner believes that an

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insurance-support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates [this act]. Hearings conducted under this section are governed by Title 2, chapter 4 and Title 33, chapter 1, part 7.

Section 18. **Service of process — insurance-support organizations.** For the purpose of [this act], an insurance-support organization transacting business outside this state that has an effect on a person residing in this state is considered to have appointed the commissioner to accept service of process on its behalf. The commissioner shall mail a copy of the notice by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner.

Section 19. **Cease and desist orders and reports.** (1) If, after a hearing pursuant to [section 17], the commissioner determines that the insurance institution, agent, or insurance-support organization charged has engaged in conduct or practices in violation of [this act], the commissioner shall reduce his findings and conclusions to writing and shall issue and cause them to be served upon the insurance institution, agent, or insurance-support organization as provided by law.

(2) If, after a hearing pursuant to [section 17], the commissioner determines that the insurance institution, agent, or insurance-support organization charged has not engaged in conduct or practices in violation of [this act], the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. The report shall be served upon the insurance institution, agent, or insurance-support organization charged and upon the person or persons if any, whose rights under [this act] were allegedly violated, in the manner provided by law for service of agency orders.

Section 20. **Civil penalties.** (1) If a hearing pursuant to [section 17] results in the finding of a knowing violation of [this act], the commissioner may, in addition to the issuance of a cease and desist order as prescribed in [section 19], order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations.

(2) Any person who violates a cease and desist order of the commissioner under [section 19] may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(a) a civil penalty of not more than $10,000 for each violation; or

(b) a civil penalty of not more than $50,000 if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; and

(c) suspension or revocation of an insurance institution's or agent's license.

Section 21. **Judicial review of orders and reports.** Any person subject to an order of the commissioner under [section 19] or [section 20]

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or any person whose rights under [this act] were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711.

Section 22. **Individual remedies.** (1) If any insurance institution, agent, or insurance-support organization fails to comply with [sections 10, 11, or 12] with respect to the rights granted under [those sections], any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, agent, or insurance-support organization that discloses information in violation of [section 15] is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of [section 15].

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of [this act].

Section 23. **Immunity.** A cause of action or claim for relief in the nature of defamation, invasion of privacy, or negligence does not arise against any person for disclosing personal or privileged information in accordance with [this act], nor does such a cause of action or claim for relief arise against any person for furnishing personal or privileged information to an insurance institution, agent, or insurance-support organization. However, this section does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 24. **Obtaining information under false pretenses.** Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or insurance-support organization under false pretenses shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

Section 25. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to this act.

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. **Effective date.** (1) This act is effective on July 1, 1982.

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(2) The rights granted under [sections 10, 11, and 15] are effective on July 1, 1982, regardless of the date of the collection or receipt of the information that is the subject of those sections.

Approved May 1, 1981.

CHAPTER NO. 581

AN ACT TO DELEGATE AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE RIVER BASIN UNDER ARTICLE X OF THE YELLOWSTONE RIVER COMPACT, SECTION 85-20-101, MCA, ON BEHALF OF THE STATE OF MONTANA; PROVIDING FOR LEGISLATIVE REVIEW; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Basin" means the Yellowstone River Basin.

(2) "Compact" means the Yellowstone River Compact provided for in 85-20-101.

Section 2. **Authority to approve diversions.** The department [of natural resources and conservation] may consent on behalf of the state of Montana to diversions of water from the basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Wyoming and North Dakota.

Section 3. **Legislative review.** (1) A diversion of water from the basin pursuant to Article X of the compact consented to by the department under the provisions of [this act] may not be made until one of the following occurs, whichever is later:

(a) the legislature ratifies the first determination of the department to consent to a diversion of water from the basin pursuant to Article X of the compact; or

(b) July 1, 1983.

(2) A decision by the department to disapprove a diversion of water is not subject to legislative approval.

Section 4. **Application — notice — objections — hearing.** (1) Any appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

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(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) Any appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in 85-2-307(1) and (2).

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state his name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

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(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state his name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing shall be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.

Section 5. **Criteria for approval — terms.** (1) The department may issue its approval of a diversion of water allocated to Montana under the terms of the compact or unallocated compact water diverted in Montana if:

(a) the diversion and the ultimate use of the water in Montana are for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant signs an agreement to comply with the laws of the signatory states to the compact in constructing, operating, and maintaining all facilities associated with the diversion and ultimate use of the water.

(2) The department may approve a diversion of water allocated to North Dakota or Wyoming or unallocated compact water diverted in North

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Dakota or Wyoming if the diversion will not adversely affect the property, rights, or interests of an appropriator located in Montana and if the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states.

(3) The department may approve a diversion subject to such terms, conditions, restrictions, and limitations as it considers necessary to meet the applicable criteria listed in subsection (1) or (2).

Section 6. **Combined proceeding.** The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of [this act] in conjunction with any board proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, as amended, if in the opinion of the department consideration of both applications in the same proceeding will better enable the board and department to fulfill their functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and [this act]. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, shall be contingent upon the department's issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent shall terminate 10 years after the date of issuance of the consent unless the board issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department.

Section 7. **Department authorized to appear in administrative and legal proceedings.** The department may appear on behalf of the state of Montana in proceedings before the legislatures and administrative agencies of the other signatory states to the compact and in legal proceedings commenced in federal or state court within the other signatory states involving the consent of such signatory states to diversions of water from the basin under Article X of the compact and any other laws or rules of such signatory states applicable to such diversions to the extent necessary to protect the interests and the citizens of Montana in those proceedings.

Section 8. **Codification instruction.** This act is intended to be codified as a new part in Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to this act.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

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CHAPTER NO. 582

AN ACT TO INCREASE THE AMOUNT AUTHORIZED FOR TRAVEL EXPENSES AND MEAL REIMBURSEMENT FOR PERSONS IN STATE SERVICE; AMENDING SECTION 2-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed *$55* per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding *$24* per day except as provided in subsection (2)(c), plus *$3* for the morning meal, $3.50 for the midday meal, and *$7* for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized *the* actual *cost of lodging in addition to a meal allowance* not to exceed *$30* per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding *$50* per day plus *$4* for the morning meal, *$6.50* for the midday meal, and *$12* for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(c) All *other* elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(3) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount

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authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available."

Approved May 1, 1981.

CHAPTER NO. 583

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING THE PROGRAM AS THE SUPERVISED RELEASE PROGRAM; RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY; TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER; STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED; AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401, 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH 46-23-404, 46-23-406, 46-23-413 THROUGH 46-23-415, AND 46-23-423 THROUGH 46-23-425, MCA.

WHEREAS, a prisoner furlough program currently exists under sections 46-23-401 through 46-23-426, MCA;

WHEREAS, the Legislature realizes that the above-named statutes are no longer workable and cause conflicts of laws and complication of efforts;

WHEREAS, the Legislature supports the basic intent of the prisoner furlough program, hereafter referred to as the supervised release program, to provide education, training, and betterment of selected prisoners and to increase such prisoners' responsibility to society; and

WHEREAS, the Legislature believes that the program can be administered in a more efficient and meaningful manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-401, MCA, is amended to read:

"46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who *is eligible under 46-23-411 and who signs* an application to participate in the *supervised release* program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a *state* district court to a term of confinement in the state prison.

(5) "State prison" means the Montana state prison at Deer Lodge *or* any adult correctional facility *designated by* the department.

(6) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the *supervised release* program.

(7) "Supervising agent" means a probation and parole officer of the department."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program — rules. The department is authorized and directed to establish a *supervised release* program and make rules in accordance with Title 2, chapter 4 *(the Montana Administrative Procedure Act)*, to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) *prisoner participation* in *a recognized* educational, treatment, or training program *or work program in conjunction with any of the above programs*;

(3) approval of *the sponsor;*

(4) review of *a board decision to deny an applicant admittance into the program;*

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement this part."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate — eligibility. *(1)* Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the *supervised release* program if he has served at least one-half of the time required to be considered for parole and *not more than 15 months remain before he is eligible for parole.*

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(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department."

Section 4. Section 46-23-412, MCA, is amended to read:

"**46-23-412. Board's action on application.** *The* board shall approve or deny the application of each prisoner after careful study of the prisoner's *release* plans, criminal history, and all other pertinent case material. *The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.*"

Section 5. Section 46-23-421, MCA, is amended to read:

"**46-23-421. Responsibility of department and supervising agent.** The department shall be responsible for the activities of a prisoner participating in a *supervised release* program under this part. The department may delegate jurisdictional supervision to *a supervising agent who* shall be responsible for *the* activities of *the* prisoner *during his supervised release.*"

Section 6. Section 46-23-422, MCA, is amended to read:

"**46-23-422. Violation of supervised release program by prisoner — revocation.** (1) *If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.*

(2) *The* prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the *supervised release conditions occurred.* The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the *department.* The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. *If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.*

(3) *Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.*

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a *supervising* agent and a new *supervised release program* shall be worked out."

Section 7. Section 46-23-426, MCA, is amended to read:

"**46-23-426. Escape.** *A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.*"

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Section 8. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, *supervision while under a supervised release program,* or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, *or supervised release program* by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, *or supervised release program*; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection."

Section 9. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more than life, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he

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shall be imprisoned in the state prison for a term of not less than 10 years or more than life, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the *supervised release* program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 10. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the *supervised release* program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2)."

Section 11. Section 46-18-401, MCA, is amended to read:

"46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term except as provided in subsection (5); and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the

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period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses shall run concurrently unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the *supervised release* program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Repealer.** Sections 46-23-402 through 46-23-404, 46-23-406, 46-23-413 through 46-23-415, and 46-23-423 through 46-23-425, MCA, are repealed.

Approved May 1, 1981.

CHAPTER NO. 584

AN ACT TO PROVIDE PROPERTY TAX RELIEF TO CERTAIN HOMEOWNERS AND RENTERS BY MEANS OF A CREDIT AGAINST INDIVIDUAL INCOME TAX LIABILITY; PROVIDING PENALTIES FOR FRAUDULENT CLAIMS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the

United States, plus all nontaxable income except all payments received under federal social security, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief; and

(g) payments and interest on federal, state, county, and municipal bonds.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under [section 2].

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Household income" means all income except payments received under federal social security received by all individuals of a household while they are members of the household.

(6) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana, owned and occupied as a residence by the owner for at least 6 months of the claim period or occupied as a dwelling of a renter or lessee for at least 6 months of the claim period, and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(7) "Department" means the department of revenue.

(8) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(9) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(10) "Rent-equivalent tax paid" means 15% of the gross rent.

Section 2. **Eligibility.** In order to be eligible to make a claim under [sections 1 through 9], an individual must have reached age 62 or older during the claim period for which relief is sought and must have resided in Montana for at least 9 months of that period.

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Section 3. **Disallowance or adjustment of certain claims.** (1) A claim is disallowed if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under [sections 1 through 9].

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount.

Section 4. **Filing date.** (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) In the event that an individual who would have a claim under [sections 1 through 9] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

Section 5. **Form of relief.** Relief under [sections 1 through 9] is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under Title 15, chapter 30, the amount of the excess shall be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under Title 15, chapter 30.

Section 6. **Computation of relief.** The amount of the tax credit granted under the provisions of [sections 1 through 9] is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax paid less the deduction specified in subsection (3).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (3).

(3) Property tax paid and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income

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9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(4) In no case may the credit granted exceed $150.

Section 7. **Limitations.** (1) Only one claimant per household in a claim period under the provisions of [sections 1 through 9] is entitled to relief.

(2) No claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

Section 8. **Proof of claim.** A receipt showing property tax paid or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant must, at the request of the department, supply all additional information necessary to support his claim.

Section 9. **Denial of claim.** A person filing a false or fraudulent claim under the provisions of [sections 1 through 9] shall be charged with the offense of unsworn falsification to authorities pursuant to section 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt shall bear interest from the date of the original payment of claim until paid, at the rate of 1% per month.

Section 10. **Codification instruction.** Sections 1 through 9 of this act are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 1 through 9.

Section 11. **Effective date.** This act is effective on passage and approval and is applicable to claim periods beginning during and after calendar year 1981.

Approved May 1, 1981.

CHAPTER NO. 585

AN ACT TO REQUIRE THE COUNTY ASSESSOR TO RELEASE THE ROLLBACK TAX LIEN; AMENDING SECTION 15-7-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-209, MCA, is amended to read:

"15-7-209. Reclassification by owner — lien. *(1)* Whenever land which is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor

shall cause the following statement to be recorded by the county clerk and recorder: "On the .... day of ...., 19.., this land became subject to the rollback tax imposed by 15-7-204."

(2) The county assessor shall execute, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the assessor shall record the releases in the office of the clerk and recorder."

Approved May 1, 1981.

CHAPTER NO. 586

AN ACT TO CREATE A SMALL CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT COURT; AMENDING SECTIONS 3-10-1001, 3-10-1004, AND 25-31-112, MCA; REPEALING TITLE 25, CHAPTER 35, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1977 the Montana Legislature enacted the provisions of Chapter 572, Laws of 1977, creating a small claims court within justices' courts in Montana, which provisions are codified as Title 25, chapter 35, MCA; and

WHEREAS, the small claims procedure makes no provision for a jury trial, provides that one party may not be represented by an attorney if the other party is not so represented, and provides that an appeal from the small claims court is to be tried on the record of the case and is not to be tried as a trial de novo; and

WHEREAS, the Montana Supreme Court has held in the case of *North Central Services, Inc. v. Hafdahl*, ____Mont.____, ____P2d____, (Civil No. 80-228, decided March 11, 1981), that the cumulative effect of these provisions is to deny the right to a jury trial and the right to counsel at every stage of the factual determination of a case in small claims court; and

WHEREAS, the Supreme Court therefore held section 25-35-403(2), MCA, to be unconstitutional and also held the remainder of Title 25, chapter 35, unconstitutional and void for the reason that it could not be severed from section 25-35-403(2), MCA.

THEREFORE, it is the intent of the Legislature to cure the unconstitutionality of Title 25, chapter 35, by repealing and reenacting those provisions with such changes as to cure the unconstitutionality of those provisions.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [this act] to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

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Section 2. **Jurisdiction.** The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $1,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

Section 3. **Removal from district court.** A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $1,500. The small claims court shall hear any action so removed from the district court.

Section 4. **Venue.** Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

Section 5. **Parties — representation.** (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than three claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

Section 6. **Commencement of action — assistance to claimant.** (1) A small claims action is commenced whenever any person appears before a justice of the peace and executes a sworn small claims complaint in substantially the same form as set forth in [section 7].

(2) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or his clerk shall give the plaintiff a copy when the plaintiff appears to execute his complaint, and a copy must be attached to the order of the court/notice to defendant.

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Section 7. **Form of complaint and order of court/notice to defendant.** The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....

.....
Plaintiff,

vs. Complaint

..... Case No. .....

.....
Defendant(s)

.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....
.....
.....
which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19....

.....
Plaintiff

.....
Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....
Justice of the peace

By:.....
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....
.....
on..... at ....
Reset for ..... at ....
Reset for ..... at ....
Reset for ..... at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further

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notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within 40 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....

.....

Dated this .... day of ....., 19....

.....

Justice of the peace

By:.....

Clerk, small claims division

Section 8. **Hearing date.** The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

Section 9. **Service on defendant.** The original of the order and notice shall be shown to the defendant, and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 10. **Return of service.** The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or his clerk.

Section 11. **Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

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(2) A counterclaim or setoff may not exceed $1,500. If a counterclaim or setoff is asserted in excess of $1,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....
.....
Plaintiff
vs. Counterclaim
..... Case No. ...
.....
Defendant(s)
.....

Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for .....
.....
.....
which sum is now due, together with defendant's costs herein expended.

Dated this ... day of ....., 19...

.....
Defendant

.....
Defendant's address

Subscribed and sworn to before me this ..... day of ....., 19...

.....
Justice of the peace

By: .....
Clerk, small claims division

Section 12. **No further pleadings.** No form of pleading other than the complaint, the order of the court/notice to defendant, and the counterclaim of the defendant, if there is one, is allowed.

Section 13. **Fees.** (1) The clerk of the justice's court shall collect a fee of $5:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and contesting of the complaint or execution of a counterclaim.

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(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

Section 14. **Proceedings to be informal.** The hearing and disposition of small claims actions shall be informal.

Section 15. **Witnesses — evidence — subpoena power.** The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence as he considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

Section 16. **Record of proceedings.** All civil actions tried in a small claims court shall be recorded either electronically or stenographically.

Section 17. **Removal to justice's court.** Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 40 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in such court.

Section 18. **Procedure following notice of removal — effect of failure to remove.** (1) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders and no fee shall be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(2) Failure to request removal within the time provided in [section 17] constitutes a waiver by the defendant of his right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing.

Section 19. **Entry of judgment.** Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.

Section 20. **Costs.** The prevailing party in an action before the small claims court is entitled to his costs.

Section 21. **Appeal to district court — commencement and scope of.** (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county where the judgment was rendered. An appeal shall be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal shall be limited to questions of law.

Section 22. **Record on appeal.** (1) Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to

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the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

Section 23. **Use of transcripts or tapes by district court.** The district court may hear the recording of the proceedings of the justice's court, but in its discretion it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

Section 24. **Execution of judgment.** Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

Section 25. **Attorney's fees upon removal or appeal.** (1) If a defendant removes a matter to justice's court under the provisions of [section 17] but does not prevail in justice's court, the court may grant the plaintiff his reasonable attorney's fees, if any.

(2) If the parties are represented by counsel on appeal, the court may grant the prevailing party his reasonable attorney's fees, in addition to costs.

Section 26. Section 3-10-1001, MCA, is amended to read:

"3-10-1001. Purpose. It is the purpose of this part and *[sections 1 through 24]* to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial."

Section 27. Section 3-10-1004, MCA, is amended to read:

"3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed *$1,500*, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed *$1,500*. The small claims court shall hear any action so removed from the district court."

Section 28. Section 25-31-112, MCA, is amended to read:

"25-31-112. Fees. The following is the schedule of fees which, *except as provided in [section 18]*, shall be paid in every civil action in a justice's court:

(1) $5 when complaint is filed, to be paid by the plaintiff;

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(2) $5 when the defendant appears, to be paid by the defendant;

(3) $5 to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the $5 for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) $5 for all services in an action where judgment is rendered by confession;

(5) $5 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Section 29. **Repealer.** Title 25, chapter 35, MCA, is repealed.

Section 30. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 587

AN ACT TO CONTINUE THE COAL TAX OVERSIGHT SUBCOMMITTEE OF THE REVENUE OVERSIGHT COMMITTEE FOR THE BIENNIUM ENDING JUNE 30, 1983; AMENDING SECTION 2, CHAPTER 619, LAWS OF 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 619, Laws of 1979, is amended to read:

"Section 2. **Coal tax oversight subcommittee.** (1) There is a coal tax oversight subcommittee of the revenue oversight committee for the biennium ending June 30, *1983.*

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be members of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

(3) The subcommittee may:

(a) review the programs financed by the coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(4) The subcommittee shall elect a chairman and may meet upon the call of that chairman. The subcommittee shall report and make recommendations to the revenue oversight committee."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 588

AN ACT TO MAKE THE LAW RELATING TO GOOD TIME ALLOWANCE MORE RESTRICTIVE; AMENDING SECTION 53-30-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-105, MCA, is amended to read:

"53-30-105. Good time allowance. (1) The department of institutions shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned *to maximum, close, and medium I security classifications*;

(b) 13 days per month for those *classified as medium II and minimum security classifications*;

(c) 15 days per month for *inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year*;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) *A person may not earn good time under this section while he is on* probation or parole."

Approved May 1, 1981.

CHAPTER NO. 589

AN ACT TO PROVIDE THAT THE SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX; TO CLARIFY THE PERIOD DURING WHICH REFUNDS AND CREDITS MAY BE GRANTED; AND TO PROVIDE FOR EXTENSIONS OF THE PERIOD BY AGREEMENT; AMENDING SECTIONS 15-30-149 AND 15-31-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such excess shall be refunded to the taxpayer.

(2) *(a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.*

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

(4) Except as hereinafter provided for, interest shall be allowed on overpayments at the *same* rate *as is charged on delinquent taxes due* from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on

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an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year, nor shall interest accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

Section 2. Section 15-31-531, MCA, is amended to read:

"15-31-531. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the *same* rate *as is charged on delinquent taxes due* from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

Section 3. **Effective date.** This act is effective upon passage and approval.

Section 4. **Applicability.** This act applies to claims for refunds or credits that were made within the time period for submission of claims

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that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired.

Approved May 1, 1981.

CHAPTER NO. 590

AN ACT TO REVISE THE INCOME LIMITATIONS APPLICABLE TO PROPERTY TAX EXEMPTION FOR 100 PERCENT DISABLED VETERANS; AMENDING SECTION 15-6-211, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-211, MCA, is amended to read:

"15-6-211. Certain disabled veterans' residences exempt. (1) A residence, including the lot on which it is built, owned and occupied by a disabled veteran is exempt from property taxation under the following conditions. The owner must:

(a) have been honorably discharged from active service in any branch of the armed services;

(b) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(c) have an annual *adjusted gross* income, *as reported on the latest federal income tax return,* of not more than *$15,000* for a single person and *$18,000* for a married couple.

(2) If a veteran whose property has been eligible for this exemption dies, the property shall continue to be exempt so long as the surviving spouse:

(a) remains unmarried;

(b) is the owner and occupant of the house; and

(c) has *an* annual *adjusted gross* income, *as reported on the latest federal income tax return,* of not more than *$15,000.*"

Section 2. **Applicability.** The provisions of 15-6-211 are applicable for taxable years beginning after December 31, 1980.

Approved May 1, 1981.

CHAPTER NO. 591

AN ACT TO AMEND SECTION 2-4-307, MCA, RELATING TO OMISSIONS FROM THE ADMINISTRATIVE RULES OF MONTANA OR THE MONTANA ADMINISTRATIVE REGISTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. *(1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state or other similar publication if the publication of the model code, rule, or other publication* would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation *to the material adopted by reference, and a statement of the* general subject matter of the omitted rule and *must state where* a copy *of the omitted material* may be obtained. *Upon request of the secretary of state, a* copy of the omitted *material must* be filed with the secretary of state.

(3) No rule originally adopting by reference any model code or rule provided for in subsection (1) of this section may adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by a three-fourths vote of the administrative code committee, an agency must immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of, and is considered to be, a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of such later amendments shall be filed in the Montana Administrative Register. This notice shall contain the information required by subsection (2) of this section, and shall state the effective date of such incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. No further notice of

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adoption or preparation of a replacement page for the administrative rules of Montana is required.

(6) If a hearing is requested under subsection (5), the petition for hearing shall contain a request for an amendment, and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule."

Approved May 1, 1981.

CHAPTER NO. 592

AN ACT TO CLARIFY AND REVISE THE DEFINITIONS AND THE PROCEDURES FOR REFUNDING MEMBERS' CONTRIBUTIONS AND FOR PAYMENT OF INVOLUNTARY RETIREMENT ALLOWANCES USED IN THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-8-101, 19-8-503, 19-8-601, AND 19-8-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement account in the agency fund.

(2) "Accumulated deductions" *or "accumulated contributions"* means the *sum of all contributions* standing to *the* credit *of a member's individual* account together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that

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they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member's annuity" means payments for life derived from contributions made by the contributor.

(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(10) "Retirement allowance" means the state annuity plus the member's annuity.

(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(12) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys."

Section 2. Section 19-8-503, MCA, is amended to read:

"19-8-503. Refund of member's contribution. *Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest.*"

Section 3. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement. (1) Any member in service who has completed at least *20* years of creditable service and who has reached the age of 55 years may retire on service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) Retirement shall be compulsory at age 60."

Section 4. Section 19-8-604, MCA, is amended to read:

"19-8-604. Involuntary retirement allowance. If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid *in one* of the following *ways* that he elects:

(1) the full amount of his accumulated deductions; or

(2) *a retirement allowance beginning on his 55th birthday calculated under the provisions of 19-8-602.*"

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Section 5. **Applicability.** The amendments made by sections 2, 3, and 4 of this act apply only to persons who join the retirement system following the effective date of this act.

Approved May 1, 1981.

CHAPTER NO. 593

AN ACT TO CLARIFY THE PROCEDURE WHEN MENTAL COMPETENCY OF THE ACCUSED IS AT ISSUE BY CHANGING REFERENCES TO ACQUITTAL SO AS TO REFLECT FINDINGS OF NOT GUILTY, PROHIBITING WAIVER OF A HEARING TO DETERMINE RELEASE OR DISCHARGE, AND REQUIRING A HEARING TO DETERMINE RELEASE OR DISCHARGE BE CONDUCTED BY THE COMMITTING COURT BEFORE DISPOSITION; AMENDING SECTIONS 46-14-201 AND 46-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-201, MCA, is amended to read:

"46-14-201. Requirement of notice — form of verdict and judgment. (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is *found not guilty of the charged offense or offenses or any lesser included offense for the reason* that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state."

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon acquittal on the ground of lack of mental state — hearing to determine release or discharge. (1) When a defendant is *found not guilty for the reason* that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order *a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence*

presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person *committed to the custody of the superintendent* shall have a hearing within *180* days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. *The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district.* The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(4) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment."

Approved May 1, 1981.

CHAPTER NO. 594

AN ACT TO PROVIDE DISTRICT COURTS AND JUSTICES' COURTS WITH CONCURRENT ORIGINAL JURISDICTION IN CERTAIN CRIMINAL CASES AMOUNTING TO MISDEMEANOR; AMENDING SECTION 3-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-302, MCA, is amended to read:

"3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

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(a) misdemeanors arising at the same time as and out of the same transaction as a charged felony;

(b) misdemeanors resulting from the reduction of a felony offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony case.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 595

AN ACT TO ASSURE THAT ONCE AN APPLICANT PASSES ONE PORTION OF THE REAL ESTATE EXAMINATION, HE IS NOT REQUIRED TO REPEAT THAT PORTION AND ELIMINATING ANY RESTRICTIONS ON HOW FREQUENTLY AN APPLICANT CAN TAKE THE EXAMINATION; AMENDING SECTION 37-51-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-303, MCA, is amended to read:

"37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) The examination for a salesman's license shall include:

(a) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(b) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter. *If the applicant passes one subject portion of the examination (a) or (b), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.*

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 596

AN ACT TO INSURE THAT STATUTES THAT IMPOSE NEW DUTIES ON SCHOOL DISTRICTS PROVIDE A SPECIFIC MEANS OF FINANCING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statutes imposing new duties on a school district to provide means of financing.** (1) Any law enacted by the legislature after July 1, 1981, except any law implementing a federal law or a court decision, that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds shall provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance such a service or facility is not effective until a specific means of financing, meeting the requirements of subsection (2), is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No legislation passed and approved after [the effective date of this act] supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

Approved May 1, 1981.

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CHAPTER NO. 597

AN ACT TO PROVIDE A METHOD FOR REVIEWING DISABILITY RETIREMENT BENEFITS OF THE JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-9-901, 19-9-904, AND 19-9-905, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Determination by board.** The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

Section 2. **Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, his retirement allowance must be canceled.

(2) The cancellation of a retirement allowance because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability allowance.

Section 3. **Determination by board.** The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

Section 4. **Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the

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recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The department of justice may request a medical or psychological review as to the ability of the member to return to work as a member of the highway patrol. If the board's findings are upheld, the department shall pay the cost of the review.

Section 5. **Determination by board.** The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

Section 6. **Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person other than an elected official whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The

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fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review.

Section 7. **Determination by board.** The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.

Section 8. **Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

(2) A person whose retirement allowance is canceled because he is no longer incapacitated shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the member to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review.

Section 9. Section 19-9-901, MCA, is amended to read:

"19-9-901. Board's determination of disability. The board shall determine whether a member has become totally and permanently disabled and whether the disability is duty-related. In the discharge of its duties regarding such determination, the board, any member thereof, or any duly authorized representative of the board may order medical examinations,

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conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical *services* and advice necessary to carry out the purposes of this *part and shall pay compensation for those medical services and advice.*"

Section 10. Section 19-9-904, MCA, is amended to read:

"19-9-904. Termination of allowance. *The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he was retired.* If an inactive member is determined by the board to be no longer totally and permanently disabled, *his disability retirement allowance must be canceled when he is offered a position under 19-9-905. If he refuses to submit to a medical examination,* his disability retirement allowance shall cease as of the date of such determination. *He* shall be notified of the determination by the board. The board may review the status of any inactive member at any time."

Section 11. Section 19-9-905, MCA, is amended to read:

"19-9-905. Reinstatement upon termination of allowance. (1) Any inactive member whose disability retirement allowance is cancelled as provided in 19-9-904 shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, *whichever is first open.* The board shall advise the employer that the disability retirement allowance has been cancelled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under 19-9-904, he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of such notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly."

Section 12. **Codification instruction.** (1) Sections 1 and 2 are intended to be codified as an integral part of Title 19, chapter 5, part 6, and the provisions of Title 19, chapter 5, apply to sections 1 and 2.

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(2) Sections 3 and 4 are intended to be codified as an integral part of Title 19, chapter 6, part 6, and the provisions of Title 19, chapter 6, apply to sections 3 and 4.

(3) Sections 5 and 6 are intended to be codified as an integral part of Title 19, chapter 7, part 6, and the provisions of Title 19, chapter 7, apply to sections 5 and 6.

(4) Sections 7 and 8 are intended to be codified as an integral part of Title 19, chapter 8, part 7, and the provisions of Title 19, chapter 8, apply to sections 7 and 8.

Approved May 1, 1981.

CHAPTER NO. 598

AN ACT PROVIDING FOR ANNUAL OR QUARTERLY REGISTRATION OF MOTOR VEHICLES OWNED BY NONRESIDENTS TEMPORARILY EMPLOYED IN MONTANA; SUBJECTING CERTAIN OF THESE VEHICLES TO TAXATION; AND ESTABLISHING WINDOW DECALS AS THE FORM OF LICENSE EVIDENCING QUARTERLY REGISTRATION; AMENDING SECTIONS 15-24-301, 15-24-302, AND 61-3-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise

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brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) *Any* motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana *and* used exclusively for transportation of such person *is subject to taxation and assessment for taxes as follows:*

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under class eight only if they are sold in Montana."

Section 2. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202(1); as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited above; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 3. **Foreign vehicles used for transportation in connection with employment.** (1) Before a motor vehicle taxed pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of taxes must apply for and obtain a window decal.

(2) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(3) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(4) There is a $2 fee for each decal, and money collected from this fee shall be deposited to the county general fund. The $2 fee is in addition to the tax.

(5) A current window decal must be displayed on the lower right-hand corner of the windshield.

Section 4. Section 61-3-703, MCA, is amended to read:

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"61-3-703. Purpose. Sections 61-3-701 and 61-3-702 shall be solely for the purpose of *taxation*, registration, and identification of vehicles operated in this state that have paid a license in another state or foreign country, and otherwise than as herein specifically set forth shall not be construed as a repeal of any laws or parts of laws having to do with the registration or licensing of automobiles within the state."

Section 5. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 61, chapter 3, part 7, and the provisions of Title 61, chapter 3, part 7, apply to section 3.

Section 6. **Coordination.** If S.B. 355, providing a license fee system for light vehicles, is passed and approved then section 1 of this act is void and section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) Any motor vehicle not subject to the light vehicle license fee brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than

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the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under class eight only if they are sold in Montana."

Approved May 1, 1981.

CHAPTER NO. 599

AN ACT TO PROVIDE A GRADUATED SCHEDULE FOR THE TAX RATE APPLICABLE TO IMPROVEMENTS ON REAL PROPERTY; PROVIDING FOR LOCAL GOVERNMENT APPROVAL IN THEIR JURISDICTION; AMENDING SECTION 15-6-134, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;

(d) the first $35,000 or less of the market value of any improvement on real property or a trailer or mobile home used as a permanent dwelling and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple;

(e) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

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(2) Class four property is taxed as follows:

(a) *Except as provided in [section 2], property* described in subsections (1)(a) through (1)(c) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(d) and (1)(e) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%."

Section 2. **Remodeling of homes, buildings, or structures — assessment provisions.** (1) Remodeling of existing buildings or structures may receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. The percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to receive the tax benefits described in subsection (1), the governing body of a county or incorporated city or town must have approved by resolution the use of the schedule provided for in subsection (1) for their respective jurisdiction.

Section 3. **Effective date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1980.

Approved May 1, 1981.

CHAPTER NO. 600

AN ACT AUTHORIZING THE ISSUANCE AND SALE OF $5 MILLION PRINCIPAL AMOUNT LONG-RANGE BUILDING PROGRAM BONDS BY THE BOARD OF EXAMINERS TO FINANCE COSTS OF STATE CAPITOL BUILDING IMPROVEMENT; APPROPRIATING INCOME FROM THE CAPITOL BUILDING LAND GRANT TO THE PAYMENT OF THE BONDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Bonds authorized.** The board of examiners is authorized to issue and sell long-range building program bonds, upon the conditions and in the manner stated in Title 17, chapter 5, part 4, in the principal

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amount not to exceed $5 million, for the purpose of financing costs of improvements to the state capitol building.

Section 2. **Appropriation.** There is appropriated to the sinking fund account established pursuant to 17-5-405 from the revenues of the capitol building land grant (exclusive of income derived from investment of accumulated revenues) in each fiscal year during the term of the bonds authorized by section 1 an amount sufficient to pay the principal of and interest on the bonds as due and to establish and maintain required reserves therefor. The appropriation shall be reduced in each fiscal year by the amount, if any, of income received in that year from investment of the reserve attributable to the bonds. The appropriation made by this section is solely for the benefit of the state and is not enforceable by the holders of the bonds.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 601

AN ACT TO PROVIDE THE MEMBERSHIP OF A SELECTION BOARD TO FILL VACANCIES ON THE TRANSPORTATION BOARD; TO REMOVE THE 2-WEEK WAITING PERIOD REQUIREMENT AFTER THE REQUIREMENT OF NOTICE OF VACANCY HAS BEEN MET; AMENDING SECTIONS 7-14-216 AND 7-14-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-216, MCA, is amended to read:

"7-14-216. Vacancies on transportation board. *(1) A vacancy on the board shall be filled by a selection board composed of two county commissioners, two representatives from governing bodies of each municipality included or partially included in the district, and two transportation board members.*

(2) A member appointed to fill a vacancy shall serve until the first county general election after his appointment."

Section 2. Section 7-14-217, MCA, is amended to read:

"7-14-217. Notice required of opening on board to be filled by appointment. (1) The selection board *or the remaining board members* shall give public notice of *their* solicitation of applications for *initial* membership on the board *or for the filling of a board vacancy.*

(2) The notice *must* be published in a newspaper having general circulation in the district, once each week for at least 2 weeks, *and, when involving an initial appointment,* the last publication *must* be at least 2

weeks before the appointment. If there is no newspaper having general circulation within the boundaries of the proposed district, the notice of solicitation *must* be posted in at least three public places within the boundaries of the proposed district for 2 weeks before the appointment."

Approved May 1, 1981.

CHAPTER NO. 602

AN ACT TO AMEND SECTIONS 18-2-201 AND 18-2-202, MCA, TO PROVIDE THAT SURETIES MUST BE ACCEPTABLE TO GOVERNMENTAL BODY AND THAT SURETY COMPANIES MUST BE LICENSED, AND TO AUTHORIZE THE USE OF DEPOSITS AND SECURITIES IN LIEU OF SURETY BONDS ON GOVERNMENT CONSTRUCTION PROJECTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Bonding requirements. (1) Whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with two or more sureties *acceptable to the governmental body letting the contract, or* with a *licensed* surety company as surety, conditioned that such corporation, person, or persons shall:

(a) faithfully perform all of the provisions of such contract;

(b) pay all laborers, mechanics, subcontractors, and materialmen; and

(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

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(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana."

Section 2. Section 18-2-202, MCA, is amended to read:

"**18-2-202. Failure to require bond.** If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation shall fail to take such bond, *cash, checks, drafts, money orders, or certificates of deposit* as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor."

Approved May 1, 1981.

CHAPTER NO. 603

AN ACT TO REVISE THE COMPENSATION PROVISIONS RELATING TO DEPUTY SHERIFFS AND UNDERSHERIFFS; AMENDING SECTIONS 7-4-2505 AND 39-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2505, MCA, is amended to read:

"**7-4-2505. Amount of compensation for deputies and assistants.** (1) *Subject to subsection (2),* the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) assessor;

(e) county attorney;

(f) auditor.

(2) (a) *The* salary of *a* deputy or *an* assistant *listed in subsection (1) may not* be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder."

Section 2. **Compensation of undersheriff and deputy sheriff.** (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:
In counties with population of:

Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (a) according to a rank structure in the department.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

Section 3. **Option to establish work period in lieu of workweek.** (1) A sheriff's department may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(2) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

Section 4. **Compensation for hours worked overtime.** The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

Section 5. **Longevity payments.** Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

Section 6. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

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(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

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(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; *or*

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to [section 3]."

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Section 7. **Construction in event of conflict.** If there is a conflict between sections 2 through 5 and any other law, sections 2 through 5 govern with respect to undersheriffs and deputy sheriffs.

Approved May 1, 1981.

CHAPTER NO. 604

AN ACT INCREASING THE AMOUNT OF LONG-RANGE BUILDING PROGRAM BONDS; PROVIDING FOR AGREEMENTS AMONG THE BOARD OF EXAMINERS, THE DIVISION OF WORKERS' COMPENSATION, AND THE EMPLOYMENT SECURITY DIVISION; AND AMENDING SECTION 17-5-410, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-410, MCA, is amended to read:

"17-5-410. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding *$31,550,505*, over and above the amount of the long-range building program bonds outstanding January 1, *1981*, upon the conditions and in the manner stated in this part. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in 17-5-402 and 17-5-407. The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds."

Section 2. **Agreement with division of workers' compensation.** If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing a workers' compensation building in Helena, the board of examiners and division of workers' compensation shall enter into an agreement pursuant to which the division shall agree to pay the state treasurer for deposit in the sinking fund account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the building, the income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the division's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the division available therefor.

Section 3. **Agreement with employment security division.** If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing employment service buildings, the board of examiners and employment security division shall enter into an agreement

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pursuant to which the division shall agree to pay the state treasurer for deposit in the sinking fund account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the buildings, income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the division's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the division available therefor.

Section 4. **Benefit of state.** The agreements to be made pursuant to [sections 2 and 3] are solely for the benefit of the state and are not enforceable by the holders of the bonds.

Section 5. **Codification instruction.** Sections 2 through 4 are intended to be codified as an integral part of Title 17, chapter 5, part 4, and the provisions of Title 17, chapter 5, apply to sections 2 through 4.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 605

AN ACT ESTABLISHING COMPENSATION AND EXPENSES FOR ELECTED STATE OFFICIALS, SUPREME COURT JUSTICES, DISTRICT JUDGES, THE COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES, THE CHAIRMAN AND MEMBERS OF THE STATE TAX APPEAL BOARD, AND LEGISLATORS; AMENDING SECTIONS 2-16-405, 3-5-211, 5-2-301, 13-37-106, AND 15-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year *1982* and following years are:

	Fiscal Year *1982*	Following June 30, *1982*
Governor	*$43,360*	*$47,023*
Lieutenant governor	*$31,077*	*$33,671*
Chief justice of the supreme court	*$44,447*	*$48,204*
Justices of the supreme court, each	*$43,360*	*$47,023*

	Fiscal Year *1982*	Following June 30, *1982*
Attorney general	*$39,555*	*$42,887*
State auditor	*$28,685*	*$31,071*
Superintendent of public instruction	*$34,120*	*$36,979*
Public service commissioners	*$31,077*	*$33,671*
Secretary of state	*$28,685*	*$31,071*
Clerk of the supreme court	*$27,870*	*$30,185*"

Section 2. Section 3-5-211, MCA, is amended to read:

"3-5-211. Salaries and expenses of district judges. (1) The annual salary of each district judge is as follows:

(a) for the fiscal year beginning July 1, *1981*, and ending June 30, *1982*, *$42,273*;

(b) after June 30, *1982*, *$45,841*.

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 3. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to *$45* a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session."

Section 4. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. (1) The commissioner of campaign finances and practices is entitled to receive *a* salary of *$23,794 in fiscal year 1982 and $25,754 after June 30, 1982.*

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(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature."

Section 5. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of *$23,554* in fiscal *1982* and *$25,493* in fiscal *1983*. The remaining state tax appeal board members shall be paid a salary of *$22,924* in fiscal *1982* and *$24,809* in fiscal *1983*. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature."

Approved May 1, 1981.

CHAPTER NO. 606

AN ACT TO REVISE AND CLARIFY THE STATE LAWS RELATING TO CHILD DAY-CARE FACILITIES; TO CLARIFY THE RULEMAKING AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE REGISTRATION OF FAMILY DAY-CARE HOMES AND GROUP DAY-CARE HOMES; TO PROVIDE A PENALTY FOR FAILURE TO COMPLY; AMENDING SECTIONS 53-4-501 THROUGH 53-4-516, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of this part is to assure that children requiring supplemental parental care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

Section 2. Section 53-4-501, MCA, is amended to read:

"53-4-501. Definitions. In this part, the following definitions apply:

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(1) "Child" means a person under 12 years of age.

(2) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that *provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home.* It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

(3) "Day-care center" means a *place in which supplemental parental care is provided to 13 or more children on a regular basis.*

(4) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(5) "Day care" means supplemental parental child care.

(6) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(7) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(8) "Family day-care home" means a private residence in which supplemental parental care is provided to three to six children from separate families on a regular basis.

(9) "Group day-care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis.

(10) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(13) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(14) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part."

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Section 3. Section 53-4-502, MCA, is amended to read:

"53-4-502. License required — registration required — term of license or registration certificate — no fee charged. *(1)* No person, group of persons, or corporation shall:

(a) establish *or* maintain a day-care *center* for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate shall set forth the ages and numbers of children for whom supplemental parental care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) Licenses or registration certificates shall be issued for periods not to exceed 1 year. The department shall charge no fee to issue a license or registration certificate."

Section 4. Section 53-4-503, MCA, is amended to read:

"53-4-503. Powers and duties of the department. The department shall:

(1) issue licenses to persons to receive *children* into a day-care *center on a regular basis*;

(2) prescribe the conditions *and publish minimum standards* upon which licenses *and registration certificates* are issued;

(3) adopt rules for *day-care* facilities consistent with the *purposes of this part; and*

(4) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis."

Section 5. Section 53-4-504, MCA, is amended to read:

"53-4-504. Standards for day care. In developing standards, the department shall seek the advice and assistance of the department of health and environmental sciences and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care *facilities*;

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(3) child-care programs and practices *necessary to ensure the* health, safety, *safety in transportation,* development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility."

Section 6. Section 53-4-505, MCA, is amended to read:

"**53-4-505. Fire safety — certification required.** (1) The state fire marshal of the department of justice shall adopt and enforce rules for the protection of children in *day-care centers* from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) *Before a license can be issued* to operate a day-care center, *each applicant* shall submit to the department a certificate of approval *from the fire marshal bureau of the department of justice or its designee,* indicating that fire safety rules have been met."

Section 7. Section 53-4-506, MCA, is amended to read:

"**53-4-506. Health protection — certification required.** (1) The department of health and environmental sciences shall adopt rules for the protection of children in day-care centers from the health hazards of *inadequate* food preparation, *poor nutrition,* and communicable diseases.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate *issued pursuant to subsection (2) or (3) before the department will issue a license.*

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 8. Section 53-4-507, MCA, is amended to read:

"**53-4-507. Application for a license or registration certificate.** (1) Application for a license *or registration certificate* shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications *for a license or registration certificate* by Indians residing on Indian reservations shall be made through the tribal governing

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body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license *or registration certificate* should be granted.

(3) Within 30 days of receipt of the application, the department shall investigate to determine whether a license or registration certificate should be issued."

Section 9. Section 53-4-508, MCA, is amended to read:

"**53-4-508. Requirements for licensure.** (1) The department *shall include in the minimum standards for day-care centers the following* requirements:

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the *day-care* facility is sufficient in number *as provided by rule* to provide adequate supervision and care of the children *in the facility.*

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, his staff, and the facility.

(i) Specify the ages and numbers of children that may be cared for in a day-care facility.

(2) It *is* the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements."

Section 10. Section 53-4-509, MCA, is amended to read:

"**53-4-509. Provisional license — provisional registration certificate.** *(1)* The department may issue a provisional license *or provisional registration certificate* for a period *which may not exceed* 6 months if it finds that a day-care facility *or applicant does not meet all standards established by the department, as long as the facility or applicant* is attempting to meet the minimum standards.

(2) The *department may not waive the* requirement that a day-care center be certified *under the provisions of 53-4-505* and *53-4-506.*

(3) The department may not waive the requirement that a day-care facility have current and adequate public liability insurance and fire insurance."

Section 11. Section 53-4-510, MCA, is amended to read:

"**53-4-510. Renewal license — registration certificate.** If a licensed *or registered* day-care facility desires to *renew a* license *or registration certificate, the* request for renewal shall be made in writing, *on forms prescribed by* the department, *in the county in which the applicant lives, 30* days prior to the expiration of its license *or registration certificate.*"

Section 12. Section 53-4-511, MCA, is amended to read:

"**53-4-511. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.** *(1) The* department or its authorized representative *shall* make periodic visits to all licensed day-care *centers* to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least 15% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) Upon request of the department, the state department of health or the state fire marshal or his designee shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(5) Upon request, the department shall give consultation to every licensee *and registrant* who desires to upgrade the services of his *program.*"

Section 13. Section 53-4-512, MCA, is amended to read:

"**53-4-512. Licensees or registrants to maintain records, furnish reports, and permit inspections.** It shall be the duty of every applicant *for a license or for registration* and every licensee *or registrant* to give *the* right of entrance *to* and inspection of premises to representatives of the department at reasonable times, to keep and maintain such records as the department may prescribe, to permit inspection of these records, and to report to the department such facts as may be required on *forms* furnished by the department."

Section 14. Section 53-4-513, MCA, is amended to read:

"**53-4-513. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing.** *(1)* The department, after *written* notice to the applicant, licensee, *or registrant,* may deny, suspend, *cancel, reduce, modify,* or revoke a license *or registration certificate upon finding that:*

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(a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license or registration certificate no longer exist;

(b) the licensee or registrant is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license or registration certificate was issued upon fraudulent or untrue representation.

(2) The applicant, licensee, or registrant by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing shall be conducted according to the department's rules."

Section 15. Section 53-4-514, MCA, is amended to read:

"53-4-514. Payments for eligible children. The department shall pay a *daily rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services."*

Section 16. Section 53-4-515, MCA, is amended to read:

"53-4-515. Violations. *(1) If* the department is advised or has reason to believe that a person, group of persons, or corporation is operating a *day-care* facility without a license *or registration certificate*, it shall make an investigation to ascertain the facts. If *the department* finds that the *day-care* facility is being or has been operated without a license *or registration certificate*, it may report the results of its investigation to the attorney general or the county attorney of the county where the *day-care* facility is being operated for prosecution and request that an injunction be issued against the facility until a license *or certificate* is issued.

(2) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(3) The department may, by its own attorney or counsel, any county attorney, *or the attorney general, initiate an action* in the district court of the *appropriate* county *and be represented by such representative* on appeal to the supreme court of Montana."

Section 17. Section 53-4-516, MCA, is amended to read:

"53-4-516. Expanded day-care assistance. (1) In addition to the payments authorized under 53-4-514 and available federal funding, the department shall pay to a licensed *or registered* day-care facility, for each child eligible to receive public financial support, a portion of the total cost of day-care as determined under subsection (2).

(2) The level of expanded day-care assistance provided under this section shall decrease as family income increases according to the following criteria:

(a) A family whose family income is 150% of the AFDC level is eligible for 100% of day-care costs.

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(b) A family whose family income is equal to or above 75% of the state's median income for families of like size is not eligible to receive expanded day-care assistance.

(c) A family whose family income is between the levels established under (a) and (b) above is eligible to receive expanded day-care assistance established on a 12-step progressive scale establishing income brackets and support levels as nearly equal as possible. This additional day-care assistance will provide for the gradual assumption of the total cost of day-care by the parents of eligible children based upon the 12 income brackets and support levels established.

(d) The department shall establish an expanded day-care assistance schedule in accordance with the procedures of the Montana Administrative Procedure Act.

(3) The department may transfer money between programs to *effect* the purposes of this section."

Section 18. **Penalty.** A person, group of persons, or corporation who establishes or maintains a day-care center or assists in conducting or maintaining a day-care center without first obtaining a license from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

Section 19. **Codification instruction.** Sections 1 and 18 are intended to be codified as an integral part of Title 53, chapter 4, part 5, and the provisions of Title 53, chapter 4, part 5, apply to sections 1 and 18.

Approved May 1, 1981.

CHAPTER NO. 607

AN ACT TO PROVIDE FOR MUNICIPAL REGULATION OF MUNICIPALLY OWNED UTILITIES; TO ESTABLISH MAXIMUM INCREASES ALLOWED; TO REQUIRE REPORTING TO THE PUBLIC SERVICE COMMISSION AND THE MONTANA CONSUMER COUNSEL; AND AMENDING SECTION 69-3-101, MCA; AND PROVIDING A PERIOD OF EFFECTIVENESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Municipal utilities — regulation by municipality — limitation.** A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in [section 5], they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements.

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Section 2. **Municipal rate hearing required — notice.** (1) If the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice shall accompany the bill for services of that utility and must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average monthly bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

Section 3. **Conduct of municipal rate hearing.** (1) At the hearing, all persons, associations, corporations or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall be allowed to make such arguments as they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision.

Section 4. **Annual report to public service commission.** A municipality regulating its utility services must make an annual report to the public service commission and furnish a copy thereof to the Montana consumer counsel. The report shall set forth the rates and number of users of each service and classification, all rate increases, and the total income and expenditures of the utility as provided in 69-3-203.

Section 5. **Rate increases over maximum.** If a municipal utility requires rate increases that yield an increase in total revenues in excess of 12% in any one year or rate increases for mandated federal and state capital improvements for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to

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finance the local government's share of the mandated improvements, it must make application for such increases to the public service commission.

Section 6. **Rules for operation of municipal utility.** Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of [this act].

Section 7. **Appeals.** (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

Section 8. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term public utility. The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(1) heat;

(2) street-railway service;

(3) light;

(4) power in any form or by any agency;

(5) *except as provided in [sections 1 through 6],* water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(6) telegraph or telephone service."

Section 9. **Effective date and termination date.** This act shall become effective on July 1, 1981. It shall terminate on July 1, 1983.

Approved May 1, 1981.

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CHAPTER NO. 608

AN ACT INCREASING THE SIZE OF LEGISLATIVE REPRESENTATION ON THE CAPITOL BUILDING AND PLANNING COMMITTEE; CLARIFYING THE COMMITTEE'S RESPONSIBILITIES WITH REGARD TO RENOVATION AND REMODELING OF THE CAPITOL; AMENDING SECTIONS 5-17-101 AND 5-17-102, MCA; APPROPRIATING FUNDS FOR COMMITTEE ACTIVITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-17-101, MCA, is amended to read:

"5-17-101. Capitol building and planning committee — appointment, composition, and meetings. (1) There is a capitol building and planning committee consisting of *16* members as follows:

(a) *six* members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) *six* members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration;

(d) the administrator of the architectural and engineering division of the department of administration;

(e) a representative of the governor's office designated by the governor; and

(f) the director of the Lewis and Clark areawide planning organization who shall serve as a nonvoting member.

(2) The committee shall select a chairman who may call meetings at his discretion for the conduct of committee business."

Section 2. Section 5-17-102, MCA, is amended to read:

"5-17-102. Function of committee — capitol area master plan. (1) The function of the committee is to establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan shall be developed and maintained with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

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(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and of state property in the immediate area of the capital city.

(2) The committee shall consult with and advise the department of administration concerning the assignment of space in the capitol complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature.

(3) The committee shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol complex.

(4) The committee shall serve as the legislature's representative in the preparation and implementation of plans for renovation and remodeling of the capitol. In this capacity the committee may decide, based on its study and analysis, the allocation and use of space in the capitol, including without limitation the location of legislative chambers and committee rooms following any remodeling. Allocation of space shall include adequate space in the capitol for the staff of the legislative finance committee, legislative audit committee, and the legislative council."

Section 3. **Appropriation.** There is appropriated $15,000 for the biennium ending June 30, 1983, from the capitol land grant account (04120) to the legislative council to fund the activities of the Capitol Building and Planning Committee.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

CHAPTER NO. 609

AN ACT TO ESTABLISH A WATER RESOURCES OVERSIGHT COMMITTEE; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND AN EXPIRATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Water resources oversight committee — establishment — appointment — organization.** (1) There is established a water resources oversight committee.

(2) The speaker of the house and the committee on committees of the senate shall each appoint four members of their respective house to serve on the committee. No more than two members from each house may be from the same party.

(3) Committee members shall elect a chairman and vice-chairman from among their number.

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(4) Committee members are entitled to compensation and expenses as provided in 5-2-302.

Section 2. **Function of the committee.** (1) The water resources oversight committee shall work with and oversee the efforts of state agencies charged with the responsibility of developing and managing the state's water resources, including the water development program created under Senate Bill 409 in the 47th legislature. The committee shall keep informed of water development projects and activities requested under the water development program. The committee may study any other issues related to water development and conservation as its members consider important to the people of the state.

(2) The committee may make such recommendations to agencies and the legislature relating to water development and conservation programs and requests for grants and loans for projects and activities under Senate Bill 409 as it considers necessary. Such recommendations may include proposals for legislation.

(3) The committee may continue the work of the previous interim's water resources and adjudication oversight committee of overseeing the implementation of the water rights adjudication system provided for in Title 85, chapter 2.

Section 3. **Committee assistance.** The committee may arrange with the legislative council to receive support services subject to the limitations of funds available for that purpose.

Section 4. **Appropriation.** There is appropriated from the renewable resource development clearance fund account $15,000 to the legislative council for the biennium ending June 30, 1983, for the purpose of supporting the activities of the water resources oversight committee.

Section 5. **Effective and expiration date.** This act is effective on July 1, 1981, and expires June 30, 1983.

Approved May 1, 1981.

CHAPTER NO. 610

AN ACT TO AMEND SECTION 3-2-304, MCA, TO REFLECT THE CURRENT NUMBER OF JUSTICES AND TO CONFORM IT TO ARTICLE VIII, SECTION 14 OF THE CONSTITUTION OF THE STATE OF MONTANA BY PROVIDING THAT EXPENSES OF THE SUPREME COURT MAY BE PAID ONLY OUT OF FUNDS APPROPRIATED THEREFOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-304, MCA, is amended to read:

"**3-2-304. Physical facilities.** (1) If proper rooms in which to hold the court and for the accommodation of the officers thereof are not provided by the state, together with attendants, furniture, fuel, lights, and

stationery, suitable and sufficient for the transaction of business, the court or *a majority* thereof may direct the clerk of the supreme court to provide such rooms, attendants, furniture, lights, fuel, and stationery.

(2) The expenses thereof, certified by any two justices to be correct, must be paid out of the state treasury *only* out of funds in the state treasury *appropriated to the supreme court.*"

Approved May 1, 1981.

CHAPTER NO. 611

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VI, SECTION 10, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE SECRETARY OF STATE SHALL CONDUCT A POLL OF ALL LEGISLATORS WHEN THE LEGISLATURE IS NOT IN SESSION AND THE GOVERNOR VETOES A BILL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VI, section 10, of the Constitution of the State of Montana is amended to read:

"Section 10. **Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members *of each house* present approve the bill, it shall become law.

(4) *(a)* If the legislature is not in session when the governor vetoes a bill *approved by two-thirds of the members present*, he shall return the bill with his reasons therefor to the *secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.*

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

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(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 2. **Effective date.** This amendment is effective immediately upon approval by the electorate of Montana.

Section 3. **Submission to electorate.** When this amendment is submitted to the qualified electors of Montana, there shall be printed on the ballot the full title of this act and the following words:

☐ FOR allowing the legislature to override a post-session veto through a poll of its members by the secretary of state.

☐ AGAINST allowing the legislature to override a post-session veto through a poll of its members by the secretary of state.

CHAPTER NO. 612

AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING FOR A REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; AND REVISING THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103, 75-3-104, 75-3-201, 75-3-202, 75-3-302, 75-3-303 75-30-102, MCA, AND SECTION 1 OF INITIATIVE 84; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR A REFERENDUM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-102, MCA, is amended to read:

"75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to ~~by~~-product, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public;

(5) for the control of mill tailings from uranium and thorium ore processing, both at active mill operations and after termination of active

operations, in order to stabilize and control the tailings in a safe and environmentally sound manner, minimize or eliminate radiation health hazards to the public, and eliminate to the maximum extent practicable the need for long-term maintenance and monitoring."

Section 2. Section 75-3-103, MCA, is amended to read:

"75-3-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in *Title* 10 CFR, *parts* 1-199, and *Title* 49 CFR, *parts* 173.389-173.399. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, *including discrete surface wastes resulting from a uranium solution extraction process, but excluding underground ore bodies depleted by such solution extraction operations.*

(2) "CFR" means the Code of Federal Regulations published by the United States Government Printing Office, Washington, D.C.

(3) "Department" means the department of health and environmental sciences.

(4) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(5) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(6) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(7) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(8) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor thereto, or federal agencies licensed by the nuclear regulatory commission.

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(9) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(10) "Source material" means uranium, thorium, or any other material which the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in such concentration to be source material.

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States nuclear regulatory commission or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(12) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(13) "Surety" means:

(a) cash deposits;

(b) surety bonds;

(c) certificates of deposit;

(d) deposits of government securities;

(e) letters of credit; and

(f) other surety mechanisms considered acceptable by the department."

Section 3. Section 75-3-104, MCA, is amended to read:

"75-3-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

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(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto."

Section 4. Section 75-3-201, MCA, is amended to read:

"75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this chapter.

(3) The department may for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules to *implement the provisions of this chapter;*

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining thereto;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings thereon."

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Section 5. Section 75-3-202, MCA, is amended to read:

"75-3-202. Licensing and registration. (1) The department shall provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. *However, the department of state lands may, in lieu of the department, provide for permitting for reclamation purposes of uranium and thorium mills and tailing disposal sites pursuant to Title 82, chapter 4, and this section.* The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 75-3-401 and 75-3-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

(9) The department or department of state lands may charge reasonable fees for its radiation control services, including but not limited to those for the issuance of categories of specific licenses consistent with the categories established by the United States nuclear regulatory commission or any successor thereto, and for inspections of licensees. Fees for

the issuance of uranium or thorium milling or concentration licenses shall be sufficient to cover the department's or department of state lands' full costs of processing an application. The department shall establish a fee structure for such milling or concentration licenses which includes an application fee and an annual license maintenance fee. The maintenance fee shall be set at a level which, taking account of the nature and size of the various types of licenses and activities, will defray the department's costs of inspections, review, and approval of license revisions."

Section 6. **Ownership of disposal sites and byproduct material.** (1) Prior to or following the expiration of any radioactive materials license issued after July 1, 1981, the department or department of state lands may condemn the title to any land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe and subject to a restriction against alienation imposed by the United States, or any interest therein, which is used for the disposal of byproduct material pursuant to the license, and the title to the byproduct itself, pursuant to Title 70, chapter 30. Condemnation is not allowed if the United States nuclear regulatory commission or any successor thereto determines, prior to the expiration of the license, that condemnation and transfer of either or both the land and byproduct material is not necessary to protect the public health, safety, or welfare.

(2) If the department or department of state lands condemns any interest in land or byproduct material pursuant to this section:

(a) the land or material must be maintained by the department or department of state lands in a manner to protect the public health, safety, and welfare;

(b) the department or department of state lands is authorized to undertake such monitoring, maintenance, and emergency measures as necessary to protect the public health, safety, and welfare;

(c) the transfer of title to the land or byproduct material does not relieve any licensee of liability for fraudulent or negligent acts done prior to condemnation.

Section 7. **Standards for decontamination.** (1) The department shall promulgate standards for the decontamination, decommissioning, and reclamation of any site at which ores were processed primarily for their source material content and which sites were used for disposal of byproduct material. However, the department of state lands, in lieu of the department, may promulgate standards for the reclamation of such disposal sites pursuant to Title 82, chapter 4, and this section.

(2) Any radioactive material license issued or renewed after July 1, 1981, for any activity that results in the production of byproduct material must contain such terms and provisions as the department determines necessary to insure that, prior to the expiration of the license, the licensee will comply with the decontamination, decommissioning, and reclamation standards of the department.

Section 8. **Surety requirements.** (1) Upon the condemnation of any land used for the disposal of byproduct material, the condemnation of

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byproduct material, or the condemnation of both such land and material, the department or department of state lands shall:

(a) require that an adequate surety, as determined by the department, be provided by the licensee in order to ensure the completion of all decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with generation or disposal of byproduct material; and

(b) determine whether any long-term maintenance or monitoring of the land or byproduct material is necessary. If the maintenance or monitoring is found necessary, the licensee must make available to the department or department of state lands the funds necessary to assure the maintenance and monitoring and funds necessary to ensure compliance with standards adopted by the United States nuclear regulatory commission relating to reclamation and long-term management of the disposal site or byproduct material, or both.

(2) The funds required by this section shall include, but are not limited to, sums collected for long-term surveillance, and, if necessary, maintenance, but do not include money held as surety where no default has occurred and the reclamation or other bonded activity has been performed.

Section 9. **Requirements for persons exempt from licensing.** The department or department of state lands may, by rule or order, require persons processing ores primarily for their source material content but exempt from licensing under this chapter to conduct monitoring, perform remedial work, and comply with such measures as the department considers necessary or desirable to protect health or minimize danger to life or property.

Section 10. Section 1 of Initiative 84 is amended to read as follows:

"New Section 1. There is a new MCA section that reads as follows:

"Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to *provide for the regulation of* the disposal of certain radioactive material.""

Section 11. Section 75-3-302, MCA, is amended to read:

"75-3-302. Disposal of large quantities of radioactive material prohibited — exclusion. (1) No person may dispose of large quantity radioactive material, *high-level radioactive material*, byproduct material *as defined in 75-3-103(1)(a)*, or special nuclear material, within the state of Montana. Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes; scientific research and development; medical research, diagnosis, and treatment; geophysical surveying; and similar uses licensed by the United States nuclear regulatory commission *or the department are exempt from this section.*

(2) Notwithstanding subsection (1) of this section, the disposal in Montana of byproduct material, as defined in 75-3-103(1)(b), produced in

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Montana, is authorized if done pursuant to a license issued by the United States or by the department.

(3) For purposes of subsection (1) of this section, "radioactive material" means any material, or combination of materials, which spontaneously emits ionizing radiation and for which a specific license is required by the United States or by the department.

(4) For purposes of subsection (1) of this section, disposal of large quantity radioactive material means the disposal from a single shipment, container, or vehicle of a quantity of radioactive material that would exceed the limits specified in 49 CFR 173.389.

(5) For purposes of subsection (1), "high-level radioactive material" means radioactive material consisting of spent nuclear fuel or the highly radioactive waste resulting from the reprocessing of spent nuclear fuel.

(6) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act, or the mining of any raw ore, provided that such activity is not inconsistent with this part."

Section 12. Section 75-3-303, MCA, is amended to read:

"75-3-303. Penalty. A person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana *in violation of 75-3-302* shall be fined an amount not more than $5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana *in violation of 75-3-302* shall be fined not more than $1,000 for each offense. In this part, each day of violation constitutes a separate offense."

Section 13. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

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(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands;

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(17) to decontaminate, decommission, or reclaim byproduct material and disposal sites in accordance with Title 75, chapter 3, part 2."

Section 14. **Codification instruction.** Sections 6 through 10 and section 1 of Initiative 84, as amended by this act, are intended to be codified as an integral part of Title 75, chapter 3, and the provisions of Title 75, chapter 3, apply to sections 6 through 10 and section 1 of Initiative 84, as amended by this act.

Section 15. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Coordination.** If Senate Bill 258 is passed and approved, any reference in this act to "department of state lands" is changed to "department of natural resources and conservation".

Section 18. **Referendum.** The question of whether this act shall become effective shall be submitted to the electors of the state of Montana at the general election to be held November 2, 1982. The question shall be submitted by printing on the ballot the full title of this act and the following:

☐ FOR allowing disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and providing a regulatory system.

☐ AGAINST allowing disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and providing a regulatory system.

Section 19. **Effective date.** This act is effective on passage and approval by the electors of the state of Montana.

CHAPTER NO. 613

AN ACT TO EXEMPT BUSINESS INVENTORIES FROM TAXATION; PROVIDING TAX CREDITS FOR BUSINESS INVENTORY TAXES PAID PRIOR TO EXEMPTION; AMENDING SECTIONS 15-6-136, 15-6-202, 15-8-104, AND 15-24-301, MCA; AND REPEALING SECTIONS 15-24-402 AND 15-24-403, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes all unprocessed agricultural products on the farm or in storage except:

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(a) all perishable fruits and vegetables in farm storage and owned by the producer; and

(b) livestock and poultry and the unprocessed products of both.

(2) Class six property is taxed at 4% of its market value."

Section 2. Section 15-6-202, MCA, is amended to read:

"15-6-202. Freeport merchandise and business inventories exemption. (1) Freeport merchandise *and business inventories are* exempt from taxation.

(2) Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in *the freeport merchandise* class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade."

Section 3. Section 15-8-104, MCA, is amended to read:

"15-8-104. Department audit of taxable value — penalty for underreporting — costs of audit paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The cost of the audit shall be paid by the department."

Section 4. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) This section does not apply to any motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana for a period not exceeding 90 days if the motor vehicle is used exclusively for transportation of such person.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under class eight only if they are sold in Montana."

Section 5. **Coordination instruction.** Senate Bill 47, introduced in the 47th legislature, removes livestock, poultry, and the unprocessed products of both from class seven and places them in class six for purposes of property taxation. If Senate Bill 47 is passed and approved, then section 1 of this act is to be replaced with the following section:

Section 1. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) *livestock and poultry and the unprocessed products of both*;

(b) all unprocessed agricultural products on the farm or in storage except, all perishable fruits and vegetables in farm storage and owned by the producer.

(2) Class six property is taxed at 4% of its market value."

Section 6. **Repealer.** Sections 15-24-402 and 15-24-403, MCA, are repealed.

Section 7. **Business inventory credit.** (1) For taxable years beginning after December 31, 1980 and before January 1, 1983, there is allowed as a credit against the taxes imposed by 15-30-103, 15-31-101, 15-31-121, and 15-31-122 a credit equal to the amount of the business inventory tax paid under 15-6-136 by the taxpayer in the taxpayer's taxable year.

(2) In the event that the credit for business inventory tax allowed in subsection (1) exceeds the taxpayer's tax liability for the taxable year, the

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taxpayer shall receive from the state a tax refund in the amount of the excess of the business inventory credit over the total tax liability.

(3) No part of the business inventory credit may be carried forward or carried back to taxable years other than the taxable year in which the taxpayer paid a business inventory tax under 15-6-136.

(4) No business inventory tax credit is allowed in the taxpayer's taxable year under subsection (1) if the taxpayer claims a deduction in the taxable year for the business inventory tax under 15-30-121 and 15-31-144.

Section 8. **Applicability.** (1) Sections 1 through 6 apply to taxable years beginning after December 31, 1982.

(2) Section 7 applies to taxable years beginning after December 31, 1980 and before January 1, 1983.

Section 9. **Effective dates.** (1) Sections 1 through 6 are effective January 1, 1983.

(2) Sections 7 through 9 are effective on passage and approval.

Approved May 7, 1981.

CHAPTER NO. 614

AN ACT TO REPLACE THE PRESENT SYSTEM OF TAXATION OF AUTOMOBILES AND LIGHT TRUCKS WITH A FEE SYSTEM; ADJUSTING THE PERCENTAGE LIMITS ON CERTAIN FINANCIAL ACTIVITIES BY LOCAL GOVERNMENTS AND PROVIDING FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS BECAUSE OF THE CHANGE IN TAX BASE; AMENDING SECTIONS 7-1-2111, 7-3-1321, 7-6-2211, 7-6-4121, 7-6-4254, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-4104, 7-31-106, 7-31-107, 7-34-2131, 10-2-301, 10-2-303, 15-6-139, 15-6-140, 15-6-201, 15-8-201, 15-8-202, 15-24-101 THROUGH 15-24-105, 15-24-301, 15-30-121, 15-31-114, 15-50-207, 19-11-503, 19-11-504, 20-9-406, 20-9-502, 61-3-303, 61-3-317, 61-3-322, 61-3-332, 61-3-335, 61-3-342, 61-3-501 THROUGH 61-3-504, 61-3-507, 61-3-509, 61-3-701, 61-6-302, 61-10-233, AND 85-7-2001, MCA; APPROPRIATING FUNDS TO REIMBURSE LOCAL GOVERNMENTS FOR REVENUE LOSS CAUSED BY IMPLEMENTATION OF THE FEE SYSTEM AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Light vehicle" means an automobile or a truck having a rated capacity of three-quarters of a ton or less.

(2) "Vehicle age" means the difference between the calendar year of the first day of the registration period and the manufacturer's designated model year.

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Section 2. **Light vehicle license fee.** (1) Except as provided in subsection (2), light vehicles are subject to a license fee. This fee is imposed in lieu of a property tax and is in addition to the tax on new motor vehicles.

(2) (a) Light vehicles that meet the description of property exempt from taxation under the provisions of subsections (a), (c), (d), or (e) of 15-6-201(1) or 15-6-203(2) are exempt from the fee imposed in subsection (1) of this section.

(b) A dealer for light vehicles is not required to pay the license fee for light vehicles held for sale or used in the dealer's business in selling or demonstrating the vehicles. Vehicles exempt under this subsection may not be used for the personal use of the dealer, his family, or employees or for any use not necessary in the pursuit of business.

Section 3. **Schedule of fees for automobiles and light trucks.** (1) Except as provided in subsection (3), the following schedule, based on vehicle age and weight, is used to determine the fee imposed by [section 2]:

Vehicle Age	Weight	
	2,850 pounds or less	More than 2,850 pounds
Less than or Equal to 4 years	$70	$90
More than 4 years and less than 8 years	40	50
More than 8 years	10	15

(2) The fee for a light vehicle is the appropriate dollar amount from the table in subsection (1) multiplied by the ratio of the PCE for the second quarter of the year prior to the year of licensing to the PCE for the second quarter of 1981. "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the United States department of commerce.

(3) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is $5.

Section 4. **Payment of fee required for operation.** (1) No light vehicle subject to the fee imposed by [section 2] may be operated unless the fee has been paid and the vehicle is licensed.

(2) A properly licensed and registered light vehicle may be operated within Montana, subject to all applicable federal, state, and local laws.

Section 5. **Light vehicle reregistration by mail.** (1) The department of revenue shall develop a procedure to permit the reregistration of light vehicles with the county treasurer by mail at the option of the owner of the vehicle. The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration.

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(2) The form to be returned to the county treasurer by the applicant, with the appropriate fees, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) The procedure for mail reregistration must be in effect by January 1, 1982.

(4) The department of revenue may adopt rules to implement the mail reregistration procedure.

Section 6. **State aid for local government.** (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:

(i) 0; or

(ii) CT - CF;

(b) CLV = CRL/NC.

(3) Prior to February 1 of year denoted Y, the county treasurer shall determine and certify to the department, the number of light vehicles registered in the county on December 31 of the prior year, denoted NC(Y).

(4) On March 1 of year Y, the department shall transmit to each county treasurer a warrant in the amount of CLV x NC(Y).

(5) Upon receipt of the payment provided for in subsection (4), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509.

Section 7. Section 10-2-301, MCA, is amended to read:

"10-2-301. License plates to disabled veterans. Any person who is a veteran of the armed service of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a citizen and resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW-rated capacity shall be

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provided with license plates upon payment of *a fee of $5* for such automobile or truck and upon proof of 100% service-connected disability."

Section 8. Section 10-2-303, MCA, is amended to read:

"10-2-303. Veterans' plates limited to one automobile or truck. No disabled veteran is entitled to license plates *under 10-2-301* for more than one passenger automobile or one truck up to and including three-quarter ton GVW-rated capacity."

Section 9. Section 15-6-139, MCA, is amended to read:

"15-6-139. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) buses and trucks *having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ½ tons*;

(b) stock, camping, and travel trailers;

(c) truck campers and toppers weighing more than 300 pounds, except those included in class five;

(d) motor homes except those included in class five;

(e) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(f) x-ray and medical and dental equipment; and

(g) citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value."

Section 10. Section 15-6-140, MCA, is amended to read:

"15-6-140. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) centrally assessed utility allocations after deductions of locally assessed properties, except as provided in:

(i) class five for cooperative rural electrical and cooperative rural telephone associations; and

(ii) class seven for rural telephone and electrical organizations;

(d) coal and ore haulers;

(e) trucks *having a rated capacity of* more than 1 ½ tons, including those prorated under 15-24-102;

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(f) trailers, except those included in classes five, eight, or nine, including those prorated under 15-24-102;

(g) theater projectors and sound equipment; and

(h) all other property not included in the preceding nine classes.

(2) Class ten property is taxed at 16% of its market value."

Section 11. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

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(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 12. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;

(d) livestock;

(e) property defined in 61-1-104(2) as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(f) mobile homes held by a distributor or dealer of mobile homes as a part of his stock-in-trade.

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(3) Credits must be assessed as provided in 15-1-101(1)(c)."

Section 13. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment. (1) (a) The department or its agent must, in each year, ascertain and assess all motor vehicles other than *automobiles, trucks having a rated capacity of three-quarters of a ton or less,* motor homes, travel trailers, or mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(b) No tax may be assessed against motor vehicles *subject to taxation* that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles *subject to taxation* brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(d) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(2) In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner."

Section 14. Section 15-24-101, MCA, is amended to read:

"15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration. (1) The department of revenue shall assess, for the purpose of personal property taxes, *the taxable vehicles in* interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and *the* assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and *are* assessed to the persons who own or claim or in whose possession or control the fleet is at the time of the application.

(2) *With respect to any* fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana between January 1 and April 1, *the taxable vehicles are* taxed for a full year. *With respect to any* fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this

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part or any other law of the state of Montana after April 1, *the* taxes *on taxable vehicles are* apportioned as provided in 15-24-303.

(3) *With respect to any* fleet contained in a renewal application, *the taxable vehicles are* assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of three-quarters of a ton or less that are part of an interstate motor vehicle fleet are subject to the light vehicle license fee imposed by [section 2]. If the fleet is proportionally registered, the fee is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, *fees, or both,* have been assessed and paid shall not be assessed *or charged fees* under this section upon presentation to the department of proof of payment of *taxes, fees, or both,* for the current registration year. The payment of personal property taxes, *fees, or both,* is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 15. Section 15-24-102, MCA, is amended to read:

"15-24-102. Valuation of interstate fleets — determination of aggregate tax due. The department of revenue shall assess *the taxable vehicles of* any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price *of the taxable vehicles* depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana as prescribed by 61-3-721 shall be the assessed value.

(3) The sum of the assessed value of all *taxable* vehicles included in the fleet multiplied by 16% shall be the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the statewide average county mill levy plus state levies as hereinafter provided."

Section 16. Section 15-24-103, MCA, is amended to read:

"15-24-103. Determination of average levy in state — application to interstate fleets — cost stated in application for registration. (1) The department of revenue shall determine the aggregate tax in the entire state for state, county, and local purposes levied on the general property of the state in the previous year, excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection, and protection purposes.

(2) From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the department shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of *taxable vehicles of an interstate motor vehicle fleet.*

(3) The original cost of each *taxable* vehicle shall be included on the application for proportional registration under the provisions of 61-3-711

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through 61-3-733. The department shall determine the original cost when the owner does not have this information on new or used vehicles or in the case of rebuilt vehicles."

Section 17. Section 15-24-104, MCA, is amended to read:

"15-24-104. Situs in state of proportionally registered fleets. (1) For the purposes of this part, any vehicle previously registered or which has had application for registration made under the provisions of 61-3-711 through 61-3-733 is hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes, *license fees, or both,* prescribed *in this part.*"

Section 18. Section 15-24-105, MCA, is amended to read:

"15-24-105. Deposit and distribution of taxes and fees on proportionally registered fleets. The personal property taxes and *license fees* collected *under this part* shall be deposited with the state treasurer for distribution to the general fund of each county *on the following basis:*

(1) for personal property taxes, according to the ratio of the taxable valuation of each county to the total state taxable valuation*; and*

(2) for light vehicle license fees, according to the ratio of light vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all such fees collected in all the counties."

Section 19. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) *Except as provided in subsections (2) through (6), property* in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise

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brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) This section does not apply to any motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana for a period not exceeding 90 days if the motor vehicle is used exclusively for transportation of such person.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for a 60-day period. The machines shall be subject to taxation under class eight only if they are sold in Montana.

(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less. These vehicles are subject to the fee provided for in [section 2]."

Section 20. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974. However, the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse.

(4) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(5) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(6) light vehicle license fees, as provided by [section 2], paid during the taxable year."

Section 21. Section 15-31-114, MCA, is amended to read:

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"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable

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period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

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(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) Light vehicle license fees, as provided by [section 2], paid within the year.

(7) That portion of an energy-related investment allowed as a deduction under 15-32-103."

Section 22. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes *or light vehicle license fees, as provided by [section 2],* paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the personal property tax *or light vehicle license fee* credit against the license fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit."

Section 23. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, *if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable*;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

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(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) *unless it has been previously paid:*

(i) the personal property taxes assessed;

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration *and/or the license fee imposed by [section 2];* or

(iii) in the case of a motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application.

(4) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax *or other appropriate* records of the proper county at the request of the county treasurer."

Section 24. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of a transferred motor vehicle shall have a grace period of 20 calendar days from the date of purchase to make application and pay the taxes, *fees, or both,* provided by part 5 of this chapter, unless the tax or fee has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law."

Section 25. Section 61-3-322, MCA, is amended to read:

"61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration on forms furnished by the division, the county treasurer shall file one copy in his office and issue to

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the applicant two copies of the application marked "Owner's Certificate of Registration and *Payment* Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof the information described in 61-3-202(2).

(3) Every owner, upon receiving a registration receipt, shall write his signature thereon with pen and ink in the space provided. Every registration receipt or a notarized photostatic copy or a duplicate thereof furnished by the division shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display it upon demand of a police officer or any officer or employee of the division or the highway department.

(4) The county treasurer shall daily forward to the division one copy of all applications for registration received that day.

(5) It shall not be necessary for the county treasurer to segregate the amount of taxes *or fees* for state, county, school district, and municipal purposes in the receipt."

Section 26. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the division may designate.

(2) All number plates for motor vehicles shall be issued for a minimum period of 4 years, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the division shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(3) In the case of motorcars and trucks, number plates shall be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall

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be treated with a reflectorized background material according to specifications prescribed by the division.

(4) The distinctive registration numbers shall begin with a number one or with a letter-number combination such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the division, provided that all county and registration numbers shall be of equal height.

(5) For the use of tax-exempt motor vehicles *that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of [section 2]*, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

(a) For vehicles owned by the state the division may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the division at such time when the physical condition of numbered plates requires same.

(b) For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the division may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number one and be numbered consecutively.

(6) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks *that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of [section 2]* and *tax exempt* trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" shall appear for plates assigned to vehicles of the motorcycle type.

(7) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle type vehicle. No registration or license fee

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may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(8) For the purpose of this chapter, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties shall be assigned numbers by the division as they may be formed, beginning with the number 57."

Section 27. Section 61-3-335, MCA, is amended to read:

"61-3-335. Transfer of license plates to another motor vehicle. (1) Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is *registered*, upon a form to be prepared and furnished by the division, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer."

Section 28. Section 61-3-342, MCA, is amended to read:

"61-3-342. Temporary windshield sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of *the* vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the division and upon the payment of a fee of $2 to be collected by the county treasurer and remitted to the division, obtain from the county treasurer of the county in which *the* vehicle is to *be registered* a temporary windshield sticker of such size, color, and design as the division may prescribe, to be

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validated by the county treasurer for a period of 60 days from the date of issuance. *The* purchaser, upon displaying *the* sticker on the lower right-hand corner of the windshield of *the* motor vehicle, *may* operate *the* vehicle during the period for which *the* windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. *The* county treasurer *may* not sell, and no person *may* purchase, more than one 60-day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day windshield sticker."

Section 29. Section 61-3-501, MCA, is amended to read:

"61-3-501. When vehicle taxes and fees are due. (1) Property taxes, new car taxes, *light vehicle license fees,* and fees in lieu of tax on a motor home or travel trailer must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes, *light vehicle license fees,* or the fee in lieu of property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes or the fee in lieu of tax due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period."

Section 30. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or prorated one-twelfth for each month or part of month for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

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(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the division may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle *is subject to the light vehicle license fee, if applicable, but* is not subject to any other assessment, taxation, or fee in lieu of tax during the calendar year in which the original application for title is made.

(6) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(7) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 31. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) *Except as provided in subsection (2), the following apply to the taxation of motor vehicles:*

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(a) A person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle for the year for which the application for registration is made.

(b) Except as provided in subsection *(1)(c)*, motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid.

(2) The provisions of subsections (1)(a) through (1)(c) do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, motor homes, travel trailers, or mobile homes as defined in 15-1-101(1)."

Section 32. Section 61-3-504, MCA, is amended to read:

"**61-3-504. Computation of tax.** The amount of taxes on a motor vehicle, other than *an automobile, truck having a rated capacity of three-quarters of a ton or less,* motor home, travel trailer, or mobile home as defined in 15-1-101(1), is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. The determination is entered on the application form in a space provided therefor."

Section 33. Section 61-3-507, MCA, is amended to read:

"**61-3-507. Exemption.** Motor vehicles subject to anniversary date registration as provided in 61-3-313 through 61-3-316 are exempt from the provisions of 61-3-503*(1)(b)* and 61-3-505."

Section 34. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes and fees in lieu of tax.** The county treasurer shall credit all taxes on motor vehicles, *light vehicle license fees provided for in [section 2],* and fees in lieu of tax on motor homes and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

Section 35. Section 61-3-701, MCA, is amended to read:

"**61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity.** (1) Before any foreign licensed motor vehicle

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may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the division. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, *if appropriate,* as required by 15-8-201 through 15-8-203 or 15-24-301 *or the payment of the light vehicle license fee as provided by [section 2],* the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration and *Payment* Receipt" and forward a duplicate copy of the certificate to the division. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 36. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) *Except as provided in subsection (2), before* any applicant required to register his motor vehicle may do so, the applicant must certify and display to the county treasurer an automobile liability insurance policy, a certificate of self-insurance, a posted indemnity bond, or eligibility for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the division of motor vehicles. The division may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented.

(2) An applicant for registration of an automobile or a truck having a rated capacity of three-quarters of a ton or less, who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.

(3) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the division and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed."

Section 37. Section 61-10-233, MCA, is amended to read:

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"61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and *payment* receipt issued under 61-3-322; or

(b) the gross vehicle weight receipt issued under 61-10-227.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight."

Section 38. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. *(1)* For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

(a) first class—all counties having such a taxable valuation of $50 million or over;

(b) second class—all counties having such a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having such a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having such a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having such a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having such a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having such a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less."

Section 39. Section 7-3-1321, MCA, is amended to read:

"7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

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(2) The municipality *may* not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding *28%* of the *taxable* value of the taxable property therein, as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness. All warrants, bonds, or obligations in excess of such amount given by or on behalf of the municipality shall be void."

Section 40. Section 7-6-2211, MCA, is amended to read:

"7-6-2211. Authorization to conduct county business on a cash basis. (1) In case the total indebtedness of a county, lawful when incurred, exceeds the limit of *22.5%* established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) Nothing in this section restricts the right of the board to make the necessary tax levies for interest and sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given him by law to obtain payment of his claim."

Section 41. Section 7-6-4121, MCA, is amended to read:

"7-6-4121. Authorization to conduct municipal business on a cash basis. (1) In case the total indebtedness of a city or town has reached *17%* of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds therein provided for and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims."

Section 42. Section 7-6-4254, MCA, is amended to read:

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"7-6-4254. Limitation on amount of emergency budgets and appropriations. (1) The total of all emergency budgets and appropriations made therein in any one year and to be paid from any city fund *may* not exceed *38%* of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the county.

(2) The term "taxable property", as used herein, means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes and does not mean the assessed value of such property as the same appears on the assessment roll."

Section 43. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, no city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed *39%* of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 44. Section 7-7-108, MCA, is amended to read:

"7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both such purposes may not in the aggregate exceed 10% over and above the *39%* referred to in 7-7-107 of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes."

Section 45. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding *23%* of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $40,000 without the approval of a majority

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of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414."

Section 46. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed *11.25%* of the taxable value of the property therein, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed *11.25%* but will not exceed *37%* of the taxable value of such property, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 47. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed *28%* of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 48. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town which owns and controls the water supply and water system and devotes the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed *55%* over and above the *28%*, referred to in 7-7-4201, of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes."

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Section 49. Section 7-13-4103, MCA, is amended to read:

"7-13-4103. Limitation on indebtedness for acquisition of natural gas system. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed *17%* of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes."

Section 50. Section 7-14-236, MCA, is amended to read:

"7-14-236. Limitation on bonded indebtedness. The amount of bonds issued to provide funds for the district and outstanding at any time shall not exceed *28% of the taxable value* of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds."

Section 51. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed *11.25%* of the taxable value of the property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed *11.25%* but will not exceed *22.5%* of the taxable value of such property when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed *22.5%* of the taxable value of the property within the county as ascertained by the last preceding general assessment."

Section 52. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds *22.5%* of the taxable value of the property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

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(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 53. Section 7-14-4402, MCA, is amended to read:

"7-14-4402. Limit on indebtedness to provide bus service. The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including the then-existing indebtedness, may not at any time exceed *28%* of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor."

Section 54. Section 7-16-2327, MCA, is amended to read:

"7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, shall have the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed *13%* of the *taxable* value of the taxable property *in* the county ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(b) No money *may* be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof."

Section 55. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed *16.5%* of the *taxable* value of the taxable property of the city or

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town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof."

Section 56. Section 7-31-106, MCA, is amended to read:

"7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, it shall be the duty of the board, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) to ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) to submit, within 60 days after ascertaining the same, to the electors of such county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section *may* not exceed *22.5%* of the *taxable* value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring of said indebtedness."

Section 57. Section 7-31-107, MCA, is amended to read:

"7-31-107. Authorization for municipality to issue bonds — election required. (1) If said petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) shall ascertain, within 30 days after submission of the petition, the aggregate indebtedness of such city or town; and

(b) shall submit, within 60 days after ascertaining the same, to the electors of such city or town the proposition to approve or disapprove said contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section *may* not exceed *16.5%* of the *taxable* value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner provided in this part."

Section 58. Section 7-34-2131, MCA, is amended to read:

"7-34-2131. Hospital district bonds authorized. (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

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(2) The amount of bonds issued for such purpose and outstanding at any time *may* not exceed *22.5%* of *the* taxable *value of the* property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second- or third-class school districts by Title 20, chapter 9, part 4.

(4) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Section 59. Section 19-11-503, MCA, is amended to read:

"19-11-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to *3%* of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than *3%* of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund."

Section 60. Section 19-11-504, MCA, is amended to read:

"19-11-504. Amount of special tax levy. (1) Whenever the total amount of the fund is less than *3%* of the taxable valuation of all taxable property within the limits of the city or town, the special tax levy shall be:

(a) not less than 1 mill or more than 4 mills on each dollar of taxable valuation of all taxable property within the limits of the city or town; and

(b) an amount sufficient to provide a growth per year in the fund, considering all sources of income to the fund and the payment of obligations out of the fund, equal to the sum produced by 1 mill levied on the taxable valuation of all the taxable property in the city or town.

(2) The special tax levy shall be a fractional part of 1 mill whenever:

(a) the total amount of the fund is less than *3%* but more than *1.5%* of the taxable valuation of all taxable property within the city or town; and

(b) the special tax levy of a fractional part of 1 mill will produce sufficient revenue to cause the fund, considering all sources of income to the fund and all payments to be made out of the fund, to exceed *3%* of the taxable valuation of all taxable property within the city or town.

(3) In cities of the third class, when the fund contains an amount which is less than *3%* of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not

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less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town."

Section 61. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue. (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is *45%* of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The *45%* maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district. All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the *45%* limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(3) Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly."

Section 62. Section 20-9-502, MCA, is amended to read:

"20-9-502. Purpose and authorization of a building reserve fund by an election. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than *45%* of the *taxable* value of the taxable property of the district. Such limitation shall be determined in the manner provided in 20-9-406. A building reserve tax authorization shall not be for more than 20 years.

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(3) The election shall be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election shall be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

(4) The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used."

Section 63. Section 85-7-2001, MCA, is amended to read:

"85-7-2001. Limitations on debt-incurring power. (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter. No irrigation district may become indebted, in any manner or for any purpose in any one year, in an amount exceeding *18.75%* of the assessed valuation of the district, except as provided in subsection (2).

(2) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may cause warrants of the district to issue therefor.

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(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the *18.75%* limitation of subsection (1)) an additional indebtedness not exceeding *12.5%* of the assessed valuation of the district and may cause warrants of the district to issue therefor.

(c) The limitation of subsection (1) does not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitation of subsection (1) does not apply to any bonds issued under this chapter pursuant to a provision which expressly supersedes the limitation.

(3) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void."

Section 64. **Validation.** Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base.

Section 65. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6.

Section 66. **Effective date.** (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Section 67. **Appropriation.** There is appropriated from the general fund the sum of $30,000,000 for the biennium ending June 30, 1983, to the department of revenue to fund the state payment to local governments provided for in [section 6].

Approved May 7, 1981.

CHAPTER NO. 615

AN ACT TO CONTINUOUSLY APPROPRIATE MONEY DEPOSITED IN THE WHEAT RESEARCH AND MARKETING ACCOUNT TO THE WHEAT RESEARCH AND MARKETING COMMITTEE; TO ALLOCATE COMMITTEE MONEY FOR RESEARCH AND DEVELOPMENT OF FEEDS AND FOODS DERIVED FROM THE BYPRODUCTS OF ALCOHOL PRODUCTION OF WHEAT AND BARLEY AND TO MODIFY THE ALLOCATION OF SUCH MONEY FOR RESEARCH AND DEVELOPMENT OF FUELS DERIVED FROM WHEAT AND BARLEY; AMENDING SECTION 80-11-222, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Determination of amount and allocation of assessment.** (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat research and marketing account pursuant to 80-11-210 is appropriated to the committee for purposes of wheat research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied.

Section 2. Section 80-11-222, MCA, is amended to read:

"80-11-222. Powers of department. The department may contract with both private and government organizations to provide for research, development, production, and marketing *of alcohol byproducts and* of *feeds* and foods derived from *the byproducts of alcohol production of* wheat and barley. This includes but is not limited to agreements with the department of natural resources and conservation to fund grants provided for in Title 90, chapter 4, part 1."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 80, chapter 11, part 2, and the provisions of Title 80, chapter 11, part 2, apply to section 1.

Section 4. **Effective date.** (1) Except as provided in subsection (2), this act is effective on July 1, 1981.

(2) Subsections (2) and (3) of section 1 are effective on July 1, 1983.

Approved May 7, 1981.

CHAPTER NO. 616

AN ACT TO PROVIDE THAT ONLY THE DEFENDANT IN A CRIMINAL ACTION MAY RAISE HIS LACK OF FITNESS TO PROCEED AND TO MAKE THE STATE LIABLE FOR THE COSTS OF COMMITMENT IN PLACE OF TRIAL AND IMPRISONMENT; AMENDING SECTIONS 46-14-202 AND 46-14-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1) *If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed,* the court shall appoint at least one qualified psychiatrist or shall request the superintendent of Warm Springs state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect."

Section 2. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised *only* by the defendant *or his counsel.* When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the *state*; but the *state* may recover them from the estate of the defendant."

Approved May 18, 1981.

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CHAPTER NO. 617

AN ACT TO CREATE THE HARD-ROCK MINING IMPACT BOARD; TO REQUIRE MINERAL DEVELOPERS TO SUBMIT AN ECONOMIC IMPACT PLAN TO THE BOARD; TO AUTHORIZE THE BOARD TO AWARD GRANTS TO IMPACTED UNITS OF LOCAL GOVERNMENT; TO PROVIDE FOR TAX PREPAYMENT FOR LARGE-SCALE MINERAL DEVELOPMENTS; TO PROVIDE FOR THE ISSUANCE OF EDUCATION IMPACT BONDS; AMENDING SECTIONS 15-16-201 AND 82-4-335, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Hard-rock mining impact board.** (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who reside in an area impacted by large-scale mineral development;

(b) no more than three persons from the same congressional districts;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) an elected school district trustee;

(f) an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state and the board shall elect a chairman from among its members.

Section 2. **Declaration of necessity and purpose.** The large-scale development of mineral deposits in the state causes an influx of people into the area of the development many times larger than the number of people directly involved in the mining operation. This influx of people and the corresponding increase in demand for local government facilities and services creates a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development.

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Section 3. **Definitions.** In [section 2 through section 11] the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in [section 1].

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Local government unit" means a political subdivision of this state, including a county, city, town, school district, or other special district that provides any of the services referred to in subsection (1)(c) of [section 8].

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility that will:

(a) employ at any given time at least 100 people; or

(b) cause, or be expected to cause, an increase in estimated population of at least 15% in a local government unit when measured against the average population of the local government unit in the 3-year period immediately preceding the commencement of the construction of the mining facility. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303(10).

Section 4. **Chairman — meetings — facilities — funding.** (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from the revenue generated from the license tax on metal mines imposed under Title 15, chapter 37.

Section 5. **Account established.** There is within the earmarked revenue fund a hard-rock mining impact account. Moneys are payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in [section 8]. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

Section 6. **Hard-rock mining impact board — general powers.** (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

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(b) adopt rules governing its proceedings;

(c) award grants to local government units subject to [section 7];

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in [section 8];

(e) make determinations as provided in [section 8]; and

(f) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

Section 7. **Basis for awarding grants.** Grants shall be awarded to local government units on the basis of:

(1) need;

(2) severity of impact from mineral development;

(3) availability of funds; and

(4) extent of local effort in meeting its needs.

Section 8. **Impact plan to be submitted.** (1) When an application for a permit is made under 82-4-335 and the permit is for a large-scale mineral development, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The impact plan shall include:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services, including but not limited to police and fire protection, sewage, water treatment, schools, road construction and upkeep, education, and medical care, which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, either from tax prepayments, as provided in [section 10], special industrial educational impact bonds, as provided in [section 11], or other funds obtained from the developer and shall provide a time schedule within which it will do so.

(3) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that

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local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. If no objection is received within the 90-day period, the impact plan shall be approved by the board.

(4) If objections are received from a local government unit, the board shall promptly notify the developer and forward a copy of the local government unit's objections to the developer. If within 30 days the local government unit and the developer cannot resolve the objection, the board shall conduct a hearing on the validity of the objections which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(5) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(6) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will make all the payments to the board required in the approved impact plan and according to the time schedule contained in the approved impact plan.

(7) The board shall deposit all payments received from the developer into the hard-rock mining impact account established by [section 5].

(8) The board shall notify the department of state lands of its receipt of the written guaranty of payment, of each required payment, and of any failure of the developer to comply with this section.

(9) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall pay to that local government unit in one sum or in parts the money from the hard-rock mining impact fund identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(10) If it is determined that an objection filed by an affected local government unit under subsection (3) is valid, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under [sections 2 through 11].

Section 9. **Permit procedure and review of impact plan to run concurrently.** It is intended that the procedure for fulfilling the permit

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requirement of 82-4-335 and the review of the impact plan by the board under [section 8] are to run concurrently.

Section 10. **Tax prepayment — large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the board of county commissioners of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes in an amount equal to at least three times the estimated property tax due the year the large-scale mineral development facility commences operation. This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of 40 mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, with appropriate bank guaranties as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for repayment according to the following procedure:

(a) In each year after the commencement of mining, the local government shall:

(i) divide its budget by the average mill levy of its jurisdiction during the 3 years immediately preceding commencement of mining operations, to arrive at a taxable valuation needed to fund its budget using the average 3-year mill levy;

(ii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value determined under subsection (5)(a)(i), but in no case by an amount greater than the taxable value of the person's property.

(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall

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not be affected by this section and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this act extend more than 10 years beyond the date the prepayment is made under this section.

(c) The procedure established under subsection (5)(a) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid.

Section 11. **Education impact bonds.** (1) When the need for new school facilities is determined, the owners of a large-scale mineral development may enter into a written agreement with the trustees of a school district that has the burden for the issuance of bonds to cover the cost of such new construction. The trustees of a school district may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial educational impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development shall provide for a payment guarantee, in addition to the taxes imposed by the school district on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds shall not be an obligation of the trustees or the school district.

(3) The debt limits set forth in 20-9-406 and the provisions of 20-9-410 and 20-9-421 through 20-9-432, inclusive, do not apply to bonds issued in accordance with this section. The interest on such bonds shall not be subject to state taxes.

Section 12. Section 15-16-201, MCA, is amended to read:

"15-16-201. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

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(2) A major new industrial facility is a manufacturing or mining facility *other than a large-scale mineral development as defined in [section 3(4)]* which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services."

Section 13. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. *(1)* No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of mining;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment; and

(g) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

(2) Except as provided in subsection (3), the permit provided for in subsection (1) for a large-scale mineral development as defined in [section 3] shall be conditioned to provide that mining may not commence until the hard-rock mining impact board approves the impact plan under [section 8] and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in [section 8]. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

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(3) Compliance with [section 8] is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 14. **Coordination.** (1) If the department of commerce has not been created by executive order on the effective date of [this act] then the hard-rock mining impact board is allocated to the department of community affairs for administrative purposes until the department of commerce is created or until July 1, 1981, whichever is earlier.

(2) If Senate Bill 344 is passed and approved:

(a) the hard-rock mining impact board created by [section 1] is replaced with the hard-rock mining impact board created by [section 12 of senate bill 344].

(b) subsection 1 of [section 3] shall read:

""Board" means the hard-rock mining impact board established in [section 12 of senate bill 344]."

(c) [Section 4] is replaced with [section 16 of senate bill 344].

(d) [Section 5] is replaced with [section 14 of senate bill 344].

(e) [Section 7] is replaced with [section 18 of senate bill 344].

(f) [Section 6], [section 13], and subsections (2) and (8) of [section 8] shall not become effective.

(g) The senate standing committee amendment 30 be amended to read:

"Page 13, line 14.

Following: line 13

Insert: "(6) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will make all the payments to the board required in the approved impact plan and according to the time schedule contained in the approved impact plan.

(7) The board shall deposit all payments received from the developer into the hard-rock mining impact account established by [section 5].

(8) The board shall notify the department of state lands of its receipt of the written guaranty of payment, of each required payment, and of any failure of the developer to comply with this section.

(9) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board may pay to that local government unit in one sum or in parts the money from the hard-rock mining impact fund identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(10) If it is determined that an objection filed by an affected local government unit under subsection (3) is valid, the local government unit shall

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be awarded and the developer shall pay reasonable costs and attorney fees associated with any appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under [section 2 through 11]."""

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Section 16. **Effective date.** This act is effective on passage and approval.

Approved May 18, 1981.

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APPROPRIATIONS

ENACTED BY THE

Forty-seventh Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1981

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APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-SEVENTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1981, 1982, and 1983 for the operation of the forty-seventh legislature and pre-session costs of the forty-eighth legislature:

House of Representatives	$1,658,854
Senate	1,017,949
Legislative Council	355,941
Printing Legislative Publications	186,400
Legislative Fiscal Analyst	3,800

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 9, 1981.

HOUSE BILL NO. 94

AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1981; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

Section 2. **Governor's power to reduce appropriations.** The governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading "Other Appropriated Funds" are from funds within the earmarked revenue fund, the federal and private revenue fund, the revolving fund and the current unrestricted subfund that accrue under provisions of law to the spending agency.

Section 4. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

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Section 5. **Appropriations.** The following money is appropriated subject to the terms and conditions of this act for the fiscal year ending June 30, 1981:

Supplementals
Fiscal Year 1981

	General Fund	Other Appropriated Funds
JUDICIARY		
District Court Operation	$ 27,700	
Supreme Court Operation	40,955	
SECRETARY OF STATE		
Records Management	53,655	
STATE AUDITOR	655	
COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES	8,140	
DEPARTMENT OF JUSTICE		
Antitrust Enforcement	32,833	
Law Enforcement Network System	1,400	
County Attorney Payroll	39,000	
County Prosecutor Services	19,075	
Transportation of Prisoners	19,000	
Criminal Investigation	5,658	
Personal Services Deficit	10,809	$ 70,531
Field Services		231,400

Any collections which occur between January 1, 1981, and June 30, 1981, within the programs of antitrust enforcement and county prosecutor services will be deposited directly to the general fund.

DEPARTMENT OF HIGHWAYS

The department of highways may transfer appropriated highway earmarked funds totaling no more than $2,712,849 from the construction and preconstruction divisions to the maintenance division in order to offset an anticipated deficit within the maintenance division.

DEPARTMENT OF REVENUE		
Property Assessment		
Phase I	110,000	
Phase II	275,000	

The appropriation for Phase II of the property assessment study may be continued into the 1983 biennium. Should a determination be made not to continue with Phase II, the $275,000 will revert to the general fund.

General Operations	117,500	

DEPARTMENT OF ADMINISTRATION

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	General Fund	Other Appropriated Funds
State Tax Appeal Board	52,000	
DEPARTMENT OF MILITARY AFFAIRS		
Disaster & Emergency	18,770	6,714

Should additional federal money become available to disaster and emergency services for the purchase of communication equipment, an equal amount of the general fund appropriation shall be reverted.

SUPERINTENDENT OF PUBLIC INSTRUCTION		
School Transportation	505,000	
Vocational Technical Centers	235,645	

Millage received by the centers from the 1 ½ mill levy over $703,274 will revert a like amount of general fund.

HISTORICAL SOCIETY		
Publications Program	11,320	
Administration Program	26,168	
SCHOOL FOR THE DEAF AND BLIND		
Education Program	42,133	
Payroll Accrual	100,000	

COMMISSIONER OF HIGHER EDUCATION

The commissioner of higher education is authorized to use $3,510 appropriated in HB 483 for University of Minnesota rural dentistry for payment of WICHE dues in fiscal 1981.

MONTANA STATE UNIVERSITY	1,190,749	1,090,690
UNIVERSITY OF MONTANA	1,318,560	94,616
EASTERN MONTANA COLLEGE	478,928	145
NORTHERN MONTANA COLLEGE	355,763	48,460
WESTERN MONTANA COLLEGE	220,746	95,588
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY	459,312	221,572

The fiscal 1981 expenditure from current unrestricted subfund at each of the units of the Montana university system shall not exceed:

Montana State University - $29,095,181
University of Montana - 24,478,209
Eastern Montana College - 8,845,963
Northern Montana College - 4,040,557
Western Montana College - 2,440,650

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	General Fund	Other Appropriated Funds

Montana College of Mineral
Science and Technology - 4,550,434

To the extent revenue and income to the current unrestricted subfund at each unit exceeds the above amounts, those funds shall be deposited in the state general fund. In addition, to the extent fiscal 1981 utility expenditures from current unrestricted funds are less than the amounts listed below for each unit of the university system, funds shall revert to the state general fund.

Montana State University - $1,503,128
University of Montana - 1,111,553
Eastern Montana College - 315,083
Northern Montana College - 158,821
Western Montana College - 161,592
Montana College of Mineral
Science and Technology - 247,004

The legislative auditor shall audit the units for compliance with these requirements by December 31, 1981.

COOPERATIVE EXTENSION SERVICE	118,708	47,000

Notwithstanding of similar provisions of HB 483 applicable to fiscal 1981, any Smith-Lever and Title V rural development funds received in excess of $1,867,389 in fiscal 1981 shall cause a like amount of general fund to revert. All Smith-Lever and Title V rural development funds available to cooperative extension service in fiscal 1981 are to be expended in fiscal 1981.

AGRICULTURAL EXPERIMENT STATION	60,000	127,633

Notwithstanding of similar provisions in HB 483 applicable to fiscal 1981, any Hatch and regional research funds received that, when added together exceed $1,381,370 in fiscal 1981 shall cause an equal amount of general fund to revert. All Hatch and regional research funds available to the agricultural experiment station are to be spent in fiscal 1981. All interest earned on earmarked revenue belongs to the state general fund. To the extent funds received in the earmarked account in fiscal 1981 from sources other than interest on investments and transfers from plant funds exceed $800,000 a like amount of general fund shall revert.

DEPARTMENT OF NATURAL RESOURCES	
Forest Fire Suppression	1,117,124
Forestry-Resource 300	577,298
Energy Division	158,892
DEPARTMENT OF AGRICULTURE	
Centralized Services	45,000
Transportation	20,000

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	General Fund	Other Appropriated Funds
DEPARTMENT OF BUSINESS REGULATION		
Centralized Services	6,320	
Weights and Measures	27,500	
DEPARTMENT OF LIVESTOCK		
Milk and Egg Bureau	5,884	
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
Board of Architects		4,210
Board of Professional Engineers and Surveyors		6,400
Board of Horseracing		25,079
Board of Nursing		20,945
Board of Psychologists		2,000
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Laboratory Division	45,337	
Health Care Facilities and Manpower Division	33,000	
PCB Expenses	30,000	
DEPARTMENT OF LABOR AND INDUSTRY		
Labor Standards Division	6,657	
DEPARTMENT OF INSTITUTIONS		
Board of Pardons	19,219	
Boulder River School and Hospital	586,256	
Central Office Corrections Division	220,579	
Center for the Aged	18,947	
Galen State Hospital	13,350	
Montana State Prison	1,277,627	
Swan River Youth Forest Camp	48,604	
Veterans' Home	366,119	
Warm Springs State Hospital	1,492,507	
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES		
Medicaid Accrual	3,954,606	
Grant-in Aid	425,000	

Item 1 is appropriated only for medicaid accruals. There are to be no cash expenditures made against this appropriation during fiscal 1981 or fiscal 1982. A unique responsibility center and appropriation number shall be established in the statewide budgeting and accounting system to account for this appropriation. Notwithstanding any other provision of law, no other medicaid accrual may be made in fiscal 1981.

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	General Fund	Other Appropriated Funds

Before expending any funds under item 2 the department shall determine that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department, for the county to meet its obligations under law to provide assistance to the needy.

Section 6. **Effective date.** This act is effective on its passage and approval.

Approved March 6, 1981.

HOUSE BILL NO. 114

AN ACT TO APPROPRIATE SUPPLEMENTAL MONEY FOR THE INTERPRETIVE-TUTOR PROGRAM AT THE MONTANA STATE SCHOOL FOR THE DEAF AND BLIND FOR THE BIENNIUM ENDING JUNE 30, 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $124,095 from the general fund to the Montana state school for the deaf and blind for the biennium ending June 30, 1981, for the purpose of providing supplemental funding for the interpretive-tutor program.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 29, 1981.

HOUSE BILL NO. 217

AN ACT TO APPROPRIATE $250,000 TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR SERVICES TO THE AGED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund, for the biennium ending June 30, 1983, to the department of social and rehabilitation services $250,000 for in-home care services for the aged. None of the appropriation may be spent for administrative costs at either the state, area, or local levels.

Approved April 24, 1981.

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HOUSE BILL NO. 261

AN ACT TO APPROPRIATE $203,000 TO THE DEPARTMENT OF ADMINISTRATION FOR RECREATIONAL DEVELOPMENT AT ACKLEY LAKE, LOCATED SOUTHWEST OF LEWISTOWN.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $101,500 from the federal land and water conservation fund and $101,500 from the renewable resources development clearance fund account as authorized by 90-2-102(3), to the department of administration for recreational development at Ackley Lake, located southwest of Lewistown.

Approved April 29, 1981.

HOUSE BILL NO. 460

AN ACT TO REAPPROPRIATE MONEY FOR IMPROVEMENTS AT LONE PINE STATE PARK LOCATED NEAR KALISPELL, MONTANA; AND TO ESTABLISH CERTAIN CONDITIONS UPON THE APPROPRIATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is reappropriated for the biennium ending June 30, 1983, from the renewable resource development clearance fund account the sum of $327,680 to the department of natural resources and conservation and to the department of administration for the department of fish, wildlife, and parks for improvements at Lone Pine State Park near Kalispell, Montana.

(2) There is reappropriated for the biennium ending June 30, 1983, from the state parks federal and private revenue account to the department of administration for the department of fish, wildlife, and parks the sum of $172,320 for the purpose of acquiring and improving land at Lone Pine State Park and Foy Lake which is contiguous with Lone Pine State Park.

Section 2. **Revenue from user fees.** Revenue obtained by the collection of user fees shall be applied to the ongoing operation and maintenance costs of Lone Pine State Park.

Section 3. **Maximum expenditure for visitor-operations center.** The expenditure for construction of the visitor-operations center at Lone Pine State Park may not exceed $175,000.

Section 4. **Reversion of state funds.** Should federal funds appropriated in section 1 be made available, $65,000 appropriated from the renewable resource development account shall be reverted.

Approved April 29, 1981.

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HOUSE BILL NO. 469

AN ACT TO APPROPRIATE MONEY TO MONTANA STATE UNIVERSITY TO PROVIDE ADDITIONAL SUPPORT FOR SEED POTATO RESEARCH AND DEVELOPMENT; AND CREATING A SEED POTATO RESEARCH AND DEVELOPMENT ACCOUNT AT MONTANA STATE UNIVERSITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated $50,000 from the renewable resource development bond account funded under 15-35-108(2)(g) to Montana state university for the biennium ending June 30, 1983, for the purpose of providing additional support for the seed potato research and development program at the Montana seed potato laboratory-greenhouse at Bozeman. This appropriation may be used only for research. No costs of administration or other indirect costs of the program may be funded by this appropriation.

Section 2. There is created at Montana state university a restricted account for seed potato research and development funding. Funds appropriated by the legislature and money contributed by the seed potato industry and other public and private grants intended for such research and development shall be deposited in this account and restricted for such use exclusively.

Approved April 29, 1981.

HOUSE BILL NO. 500

AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1983; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This act may be cited as the "General Appropriations Act of 1981".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents for the university system.

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(3) "University system unit" means the board of regents, office of the commissioner of higher education, the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central office at Bozeman, or the bureau of mines and geology with central office at Butte.

Section 3. **Budget amendments.** (1) The approving authority may approve a budget amendment to spend funds that were not available for consideration by the legislature but have become available from a source other than the state's general fund or earmarked revenue fund and other than receipts to the state from the United States government made available under provisions of P.L. 94-488, the federal Revenue Sharing Extension Act or any extension or modification of that act. Each budget amendment shall be submitted to the budget director and the office of legislative fiscal analyst.

(2) A budget amendment may be approved to spend money in the earmarked revenue fund only if the approving authority certifies that an emergency justifies the expenditure.

(3) A budget amendment may be approved for a time period greater than one fiscal year but not to exceed the biennium ending June 30, 1983. Budget amendments for greater than one fiscal year shall itemize planned expenditures by fiscal year.

Section 4. **Amendment procedures.** (1) In approving a budget amendment, the approving authority shall:

(a) certify specific additional services to be provided as a result of a higher expenditure level;

(b) certify that no other alternative is available to provide the additional services;

(c) certify that the additional proposed services have not been considered and rejected by the legislature;

(d) certify that no commitment, implied or otherwise, is made for increased future general fund support;

(e) specify criteria for evaluating the effectiveness of the additional services provided.

(2) The additional funds are appropriated contingent upon total compliance with all budget amendment procedures.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its 1985 biennium budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1). If any agency fails to submit its final, complete budget request by the deadlines established in 17-7-112(1), the expenditure authority herein granted shall be reduced or rescinded by

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the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension not to exceed 30 days.

Section 6. **Detailed budget information.** Within 10 days after the 48th legislature convenes in regular session, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by treasury fund. This information shall be filed in the respective offices and available to members of the legislature and the general public.

Section 7. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 8. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading "Other Appropriated Funds" are from funds within the earmarked revenue fund, the federal and private revenue fund, or the revolving fund that accrue under provisions of law to the expending agency. Any federal funds received by or allocated to the state of Montana prior to January 3, 1983, as a block grant as defined by an act of congress enacted subsequent to April 1, 1981, and specifically designated as a block grant shall require a special session of the legislature for appropriation by the legislature prior to distribution of these funds among agencies and programs.

Section 9. **Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance.

Section 10. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, for services with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless such contract contains a provision allowing access to those records of the nonstate entity as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract shall so provide upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

Section 11. **Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce any appropriation by not more than 15% except appropriations for:

(1) payment of interest and retirement of state debt;

(2) the legislative branch;

(3) the judicial branch;

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(4) public schools; or

(5) salaries of elected officials during their term of office.

Section 12. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

Section 13. **Reversion.** Notwithstanding other provisions of law, the unexpended balance of each appropriation reverts to the fund from which it was appropriated at the end of each fiscal year unless otherwise provided in this act.

Section 14. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received an appropriation.

Section 15. **National conference of state legislatures.** Agencies may participate in the activities and programs of the national conference of state legislatures within existing appropriations.

Section 16. **Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5 of the Montana Constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1983. The portion of the general fund which represents this appropriation is appropriated to the school foundation program in HB 611 ($16,000,000), the long-range building bond proceeds and insurance clearance account in HB 666 or the highway earmarked revenue account ($16,469,324), and to the department of commerce in HB 500, items 4, 5, 6, and 8 ($1,580,676).

Section 17. Amounts appropriated for audits may be transferred between fiscal years.

Section 18. **Totals not appropriations.** The totals shown in the act are for informational purposes only and are not appropriations.

Section 19. **Appropriations.** The following money is appropriated only for the purposes shown for the respective fiscal years:

A. LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE AGENCIES

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
LEGISLATIVE AUDITOR	1,008,825	861,675	1,266,805	783,425
LEGISLATIVE FISCAL ANALYST	489,178		506,639	

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
LEGISLATIVE COUNCIL	1,905,829	318,200	1,801,835	42,000

The general fund appropriation for FY 1982 includes funds for CSG and NCSL travel, interim studies, Forestry Task Force, Revenue Oversight Committee, Administrative Code Committee, District and Apportionment Commission, coal tax oversight subcommittee, and Constitutional Convention Proceedings publication in the total amount of $347,710 which is a biennial appropriation.

The 1982 appropriation for the legislative council contains $6,000 in general fund for the coal tax oversight subcommittee. This biennial appropriation is contingent upon passage of SB 487.

ENVIRONMENTAL QUALITY COUNCIL	151,807		166,178	
CONSUMER COUNSEL		460,752		479,237
JUDICIARY				
1. Supreme Court Operations:	990,113		980,656	
2. Boards and Commissions	141,182		145,269	
3. Law Library	279,969		325,813	
4. District Courts	1,537,532		1,545,622	
5. Moving Expenses			31,342	
6. Moving Expenses: Rent Increase			130,301	
7. Montana Reports	42,000		40,000	
8. Audit	10,000			
9. Water Courts Supervision		227,543		349,762
Total Judiciary	3,000,796	227,543	3,199,003	349,762

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

If federal funds should be received for previously federal funded activities that have been general funded this biennium, a like amount of general fund, less matching requirements, shall be reverted to the general fund.

GOVERNOR'S OFFICE

1. Executive Office	761,732	150,000	757,638	100,000
2. Mansion Maintenance	78,986		70,721	
3. Air Transportation	90,124		99,969	
4. Office of Budget and Program Planning	643,626		654,946	
5. Legal Jurisdiction	59,378		65,698	
6. Lieutenant Governor	173,141		179,332	
7. Citizens' Advocate	65,864		68,654	
8. Board of Visitors	46,813		48,545	
9. Old West Regional Commission Dues	45,000		60,000	
10. Engine Replacement	70,000			
11. Audit	16,000			
12. Contingency - Vacancy Savings	1,600,000			
Total Governor's Office	3,650,664	150,000	2,005,503	100,000

Federal indirect cost reimbursements shall be reverted to the general fund.

Item 10 is an expense for the biennium.

Funds in item 9 shall revert to the general fund if not used for this purpose.

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 12, a biennial appropriation, is solely for instructional faculty salaries in the six college and university units and shall only be expended if vacancy savings are not realized. As a further condition precedent to the expenditure of this item 12 appropriation, any of the said agencies requesting any portion of said appropriation shall submit a verified request therefor, which request shall be verified by the president of the requesting agency and supported by evidence itemized and detailed establishing, to the satisfaction of the governor, that the requesting agency is entitled to a portion of said funds. The request and supporting documentation must be submitted by March 15 of each fiscal year and shall be subject to the conditions herein set forth. The governor shall respond with his decision by April 15 of each fiscal year.

The above agencies shall, by July 1 of each fiscal year, submit for the current unrestricted subfund a detailed list of all FTE, faculty positions, each individual salary, and total budgeted benefits. The list shall equal total compensation at 100% excluding critical area faculty salary adjustment funds appropriated in this act for personal services. This total compensation figure may not from any individual agency be 3.6% greater than the operating budget for personal services for such agency. The list shall have at least these sections. Section 1 shall detail the positions which are eligible for the contingency vacancy savings appropriation. Any salary increases granted after this list is submitted will not be reimbursed from the vacancy savings fund. Section 2 shall detail all other staff. Section 3 shall detail by position the allocation of the critical area faculty salary adjustment funds.

In the event any such request is submitted and the governor shall find that the requesting agency has satisfied all the requirements and conditions herein set forth, the governor may issue his approval for expenditure of the said contingency-vacancy funds.

If the governor should determine, in his discretion, that any requesting agency has not satisfied the conditions of item 12 relating to a request for a portion of this appropriation, he may deny such request and such denial shall constitute final agency action.

SECRETARY OF STATE

1. Records Management	580,152		573,661	
2. Administrative Code	86,072	80,000	91,801	81,000
3. Audit			6,000	

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Voter information pamphlets			53,000	
5. Systems Development	111,500		88,500	
Total Secretary of State	777,724	80,000	812,962	81,000

A budget amendment increasing the administrative code's revolving fund spending authority in item 2 may be approved only for additional printing expenses and related supplies and postage.

The secretary of state is directed to contract with the information systems division (ISD) for systems development.

COMMISSIONER OF POLITICAL PRACTICES

1. General Operations	120,466		116,992	
2. Audit			3,000	
Total Commissioner of Political Practices	120,466		119,992	

STATE AUDITOR

1. State Auditor	1,547,545	125,000	1,561,152	150,000
2. Actuarial Fees: Insurance Division	10,000		10,000	
3. Audit	12,300		35,300	
Total State Auditor	1,569,845	125,000	1,606,452	150,000

In addition to the funds appropriated above, the local assistance distribution of funds provided for in 19-10-305(1), 19-11-512, 19-11-606, and 19-12-301 is appropriated.

Revenues generated under provisions of 50-3-109 shall be deposited to the general fund.

DEPARTMENT OF JUSTICE

1. General Operations	7,826,540	8,213,221	7,428,170	8,391,837

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Case Travel: Legal Services Division	12,000		13,000	
3. Contracted Services: Antitrust	16,500		16,500	
4. Severance Pay	4,900			
5. Hearings Officer		5,000		5,000
6. Audit	20,500	20,500		
7. Moving Costs		1,713	25,000	
8. Out-of-State Travel: Forensic Science	1,000		1,000	
9. County Attorney Payroll	602,395		602,395	
10. Transportation of Prisoners	112,314		129,115	
11. Radio Equipment	42,000		25,000	
12. a. SB 466		3,750		
b. HB 364	5,000		5,000	
c. HB 389		5,000		5,000
Total Department of Justice	8,643,149	8,249,184	8,245,180	8,401,837

Appropriated amounts within item 2 are for case-related travel only.

Any fund balance remaining within the motor vehicle account at the end of a fiscal year shall revert to the general fund.

Any collections made by the county prosecutor services program or antitrust enforcement efforts shall be deposited to the general fund.

Item 4 contains $4,900 for the biennium for severance pay, to be paid upon request from the county prosecutor program.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The rate charged by the agency legal services program may not exceed $30 per hour in 1982 and $35 per hour in 1983.

Collections made from hearings conducted by the motor vehicle division on dealer franchises shall be deposited to the general fund.

Funds remaining within the 1981 biennium appropriation for coal tax defense at June 30, 1981, are reappropriated for the 1983 biennium for the same purpose. These funds are approved for legal-related costs only.

Salaries as established for the forensic science division may not be altered or combined during the 1983 biennium to recreate the position of director of forensic services, which was specifically abolished by the legislature, or any other position which functions as a pathologist's assistant.

Amounts in item 12 are contingent upon passage of the noted bills.

BOARD OF CRIME CONTROL

1. General Operations	218,250	391,250	217,900	404,400
2. Grants		1,100,000		2,100,000
3. Audit	1,150	12,850		
Total Board of Crime Control	219,400	1,504,100	217,900	2,504,400

Should federal funds become available for the uniform crime reporting program or the criminal justice data center, a like amount of general fund, less the matching requirement, shall be reverted. The maximum general fund reversion is $83,800 in 1982 and $86,500 in 1983, less matching requirements.

DEPARTMENT OF HIGHWAYS

1. General Operations Division		7,545,871		7,591,008
2. Low-Band Radio Equipment		74,000		74,000
3. Construction Division		118,303,305		118,876,162
4. Maintenance Division		36,011,400		37,854,616

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
5. Preconstruction Division		12,435,358		12,198,196
6. Service Revolving Division		2,426,004		2,537,543
7. Motor Pool Division		1,036,727		1,160,844
8. Equipment Division		11,369,034		12,113,491
9. Stores Inventory		13,341,876		14,518,052
10. Capital Outlay		570,072		571,153
11. Audit		20,625		61,875
Total Department of Highways		203,134,272		207,556,940

The department of highways is directed to:

(1) Develop and institute a comprehensive construction project planning system. This system will be operational no later than July 1, 1985, and will be the basis for:

(a) project scheduling
(b) project monitoring
(c) manpower planning
(d) work measurement and evaluation
(e) cash flow projections
(f) long- and short-range construction goals; and
(g) budget preparation.

(2) Utilize the partial funding method for construction projects.

(3) Institute a cash forecasting system to minimize cash reserves.

(4) Maintain a surplus of completed construction plans in order to obligate and expend the maximum amount of federal dollars available for construction during the biennium.

(5) Submit to the 1983 legislature a construction work plan for the 1985 biennium that is detailed by year, project phase, and fund. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1985 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year, fund, and project phase.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

(6) Institute a maintenance management system for the maintenance division that incorporates equipment needs and usage. This system will be operational no later than July 1, 1985.

(7) Conduct a thorough assessment of equipment needs based on maintenance needs by geographic area.

(8) Submit to the 1983 legislature a maintenance work plan for all operational systems that ties directly to the maintenance division budget request for the 1985 biennium.

(9) Report quarterly to the legislative finance committee regarding the progress of the above-mentioned items.

Should additional federal money become available during the 1983 biennium for highway construction, highway earmarked funds shall be budget amended to the extent of matching requirements.

Earmarked revenue within the equipment division must be reduced dollar for dollar by revenue collected from the auction of equipment. This is contingent upon passage of SB 169.

The Helena headquarters van pool project administered by the department of highways may continue in operation and is to be operated on a self-supporting basis.

Funds may be transferred between line items 1, 3, 4, 5, 6, 7, and 8 to reflect actual personal service expense. No other transfers between line items may be made. This is not to be construed as permitting the transfer of full-time equivalent employees between programs, nor may there be an increase in the total number of appropriated full-time equivalent employees.

The conservation education program is funded.

The maintenance division is directed to establish a separate revolving account to reflect collections and expenditures related to damaged structures. One million dollars per year in highway earmarked funds will be replaced with revolving authority.

DEPARTMENT OF REVENUE

1. General Operations	12,340,311	1,325,313	12,490,050	1,359,671
2. Audit Costs	16,500	8,500	49,500	25,500
3. Legal Fees: Director's Office	25,000		25,000	

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Recovery Services Division	197,718	593,153	199,603	598,807
5. SB 50	40,000		10,000	
Total Department of Revenue	12,619,529	1,926,966	12,774,153	1,983,978

Should the recovery services division return $1.05 in collections per $1.00 expended in 1982, the appropriation in item 4 may be increased a maximum of $16,000 from the general fund and $48,000 in federal funds for fiscal 1983.

Cash within the central supply revolving account at 1981 fiscal year end must be deposited to the general fund. Collections from liquidation of inventory during the 1983 biennium must also be deposited to the general fund.

In addition to those amounts appropriated above, there are appropriated to the liquor division funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor monopoly. The division shall deposit not less than $13 million of liquor profits to the general fund during the 1981 biennium. During the 1983 biennium, profits may not be less than 15% of net liquor sales and not less than $13 million. Net liquor sales are gross liquor sales less discounts and all taxes collected.

The operational expenses of the liquor merchandising system may not exceed 15% of net liquor sales. Operational expenses may not include product or freight costs. The liquor division has full authority to determine store operating hours and the number and location of stores and employees and may raise or lower the liquor pricing formula to achieve the deposit requirement.

Nonprofitable state stores should be closed or converted to agency stores in an orderly manner. A nonprofitable store is one that shows a net loss or is less profitable than if run at agency store status after reducing gross revenues by all state excise and license taxes and by deducting therefrom all normal operating expenses, which include a pro rata share, based on gross sales, of central administrative office expenses.

The county commissioners of the various counties and the governing bodies of local government units shall provide office space in county courthouses or government office buildings to the department of revenue of the state for its use at no cost to the state. The department is not liable for any expenses in connection with the use of such space, including but not limited to rent, utilities, or janitorial services. The department shall use such space as offices for its agents: the county assessor, appraiser, and their respective staffs.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Item 5 is contingent upon passage of SB 50.				
DEPARTMENT OF ADMINISTRATION				
1. General Operations	4,231,557	14,120,573	4,260,356	14,354,970
2. Communication Expense - Communications Division		2,938,440		2,862,239
3. Insurance Expenses - Insurance Division	175,000	1,769,195	192,500	1,898,888
4. Audit Fees	31,500	104,000	16,000	55,500
5. Equipment - Duplicating Services		152,799		61,500
6. Systems Development - Merit System		25,000		27,100
7. Systems Development - Purchasing Division	120,000		55,500	
8. Systems Development - Teachers' Retirement System		140,000		
9. Emergency District Court Funding	375,000		375,000	
10. Disability Benefit Review - Public Employees' Retirement System		5,625		3,750
11. Unified Firefighters - Public Employees' Retirement System		25,770		25,270
12. General Services - Additional Buildings		200,845		205,500
13. Rent - Transferred Divisions	26,458	26,707	28,712	29,312
Total Department of Administration	4,959,515	19,508,954	4,928,068	19,524,029

The agency shall charge those divisions not supported by general fund for legal services provided by the attorney in the central office, and such income shall be deposited in the general fund.

An additional accountant is provided in the architecture and engineering division for the 1983 biennium only.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The architecture and engineering program is funded solely from the long-range building account. Any fund balance at the end of a fiscal year shall be reverted to the long-range building account. This program shall assess a 1% charge on the cost of construction funded from accounts other than the long-range building account at the time a contract is let and this revenue shall be deposited to the long-range building account.

The intent of the legislature is that all office space rentals in Helena be based on competitive bid.

The maximum length of a purchasing contract is extended to 5 years for the purchase of a new computer by the computer services division.

The state may continue to use its own printing facilities.

The graphic arts bureau of the publications and graphics division shall establish a separate revolving fund and shall become a self-supporting operation.

The office of budget and program planning shall assure reimbursement to the general fund for all management studies or systems support needs assessments provided by the consulting services bureau to nongeneral funded agencies if those agencies have sufficient funding available.

The board of investments shall operate under an earmarked fund.

As of July 1, 1981, interest generated on the $2.5 million loan to the self-insurance fund shall be deposited to the sinking fund that loaned the funds. Repayment of the loan shall occur at such time as the invested funds reach par.

All employees working under the direction of the workers' compensation judge shall be classified.

In the local government services division, general fund money is provided only for administrative support, which includes 6.7 full-time employees, and related support costs. Auditing services are expected to be self-supporting.

The budgeting, accounting, and reporting system (BARS), which is being implemented statewide into local governmental entities, is expected to be completed no later than June 30, 1984.

Item 9 provides for emergency funding of the district courts in those instances when a court incurs extraordinary expenses due to an extended criminal case or state government-related suits in Lewis and Clark County. These funds shall not be used for usual court operations or additional social service programs.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Emergency funds to Lewis and Clark County for state government-related suits will not exceed 10% above the revenue collected through the 6-mill levy.

No more than $9,000 may be spent during the biennium on a consumer health education program. All funds expended must be matched by a like amount from the health insurance carrier.

Item 10 is contingent upon passage of HB 372.

Item 11 is contingent upon passage of HB 674.

Item 12 is contingent upon the purchase of additional buildings, as referred to in HB 666, and the assumption of related maintenance duties by the department. The amount of funds spent shall be prorated based on the remaining portion of the fiscal year.

Item 13 contains the spending authority necessary to fund the lease agreement and other related costs for those divisions located in the building at 1424 Ninth Avenue. When this building is purchased by the state and maintenance responsibilities are assumed, all of the remaining funds in item 13, except for the prorated remaining portion of the annual charge of $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 that the department of administration shall charge for rent and repair expenses, shall revert.

The accountant added in item 11 is for this biennium only.

DEPARTMENT OF MILITARY AFFAIRS				
1. Adjutant General	828,740	688,435	902,865	753,687
2. Disaster and Emergency Services	174,075	290,992	175,747	297,008
3. Audit	6,150	3,850		
Total Military Affairs	1,008,965	983,277	1,078,612	1,050,695

All departments within section A may purchase low-band radio equipment on an emergency basis only. The department director shall certify on the purchase order the nature of the emergency.

TOTAL LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE	40,125,692	237,529,923	38,729,282	243,007,303

B. HUMAN SERVICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
1. Operations	3,104,046	17,333,780	3,116,388	18,069,510
2. Audit	2,873	8,377	8,616	25,134
3. Subdivisions Bureau	_____	79,856	_____	79,856
Total Department of Health and Environmental Sciences	3,106,919	17,422,013	3,125,004	18,174,500

In item 3 $39,928 each year is contingent upon legislative approval of the governor's amendment to HB 179.

No funds are appropriated for the hazardous waste program. However, the department may budget amend federal spending authority for the hazardous waste program if these federal funds become available and no additional general fund is required.

DEPARTMENT OF LABOR AND INDUSTRY

1. Labor Administration		430,137		423,601
2. Labor Standards	369,476	31,377	384,023	18,098
3. Personnel Appeals	318,604	8,000	321,036	8,000
4. Employment & Training		1,187,396		1,208,269
5. Human Rights	122,355	75,657	128,502	72,509
6. Employment Security		15,056,962		15,435,596
7. Workers' Compensation	906,149	4,650,371	861,886	5,369,986
8. Audit	_____	35,000	4,287	39,713
Total Department of Labor and Industry	1,716,584	21,474,900	1,699,734	22,575,772

In item 5, general funds shall revert in the amount that other appropriated funds exceed the amounts shown for each fiscal year.

No funds may be used for a women's bureau.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The division of workers' compensation shall study performance factors that measure the division's operational effectiveness. The intent is to determine if the workers' compensation division budget should be based on performance measurements rather than expenditure limitations. This study shall be presented to the governor and the legislative finance committee by August 1, 1982.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1. General Operations	21,251,903	23,263,217	23,659,030	24,172,714
2. Medicaid State Institutional Reimbursements	3,134,021		3,369,523	
3. Medicaid	53,530,911			
4. Medicaid Accrual	4,350,000		4,785,000	
5. Department of Community Affairs — Community Services		1,126,474		1,206,884
6. Audit	23,000	123,000		
7. HB 258	53,865	100,035	53,865	100,035
Total Department of Social and Rehabilitation Services	82,343,700	24,612,726	31,867,418	25,479,633

Within other appropriated funds in item 1 is no more than $175,000 for the biennium for the operation of the developmental disabilities policy advisory council. Any federal money received above this amount may be spent only to improve direct client services as recommended by the council and approved by the SRS director.

The department is encouraged to utilize medicaid funds to support community services for the developmentally disabled where the use of such funds is cost-effective in providing services in the least restrictive environment. The department may use any savings generated from the budget for the developmentally disabled to develop additional community services.

The department of social and rehabilitation services shall assure that the community developmental disabilities group homes are reporting all financial transactions through a uniform accounting system including a single chart of accounts and accounting manual.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

No money may be disbursed to the homes after July 1, 1982, unless the director of the department of social and rehabilitation services certifies to the legislative finance committee that the group homes are recording and reporting financial information uniformly.

The director shall reorganize the vocational rehabilitation and visual service programs to effect administrative economies and maintain direct benefits to clients within the appropriations herein provided. At least 15% of federal funds available for vocational rehabilitation shall be expended for the blind.

The governing body of any area agency on aging that contracts with SRS shall conduct its business in open meetings as required by Title 2, chapter 3, MCA.

The department shall monitor and assess the activities of the area agencies on aging for implementation of the department-approved area plans for aging services and shall report to the legislative finance committee, no later than 60 days prior to the beginning of the 48th legislative session, the extent to which the area agencies have complied with the area plans and the extent to which the area agencies have cooperated with the local government funding sources.

When federal funds for health underserved rural areas, Indian health services or certification surveys by the department of health and environmental sciences decrease or end, there is to be no state funding of these services during the biennium.

The department may use general fund money appropriated in item 3 together with matching federal funds to augment item 2. The department shall fully match the appropriation in item 2 at the maximum allowable federal rate with federal medicaid funds.

Item 3 is a biennial appropriation for cash expenditures made from July 1 to June 30 of each fiscal year. There may not be an accrual made at fiscal year end under item 3.

Item 4 is only for medicaid accruals. There may not be any cash expenditures made against this appropriation during fiscal 1982, 1983, or 1984. A unique responsibility center and appropriation number shall be established in the statewide budgeting and accounting system to account for this appropriation.

By August 1, 1982, the department shall identify all optional services by specific type provided under the medicaid program. The identification must include the number of recipients, cost per optional service, and the impact of not funding each option.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

If appropriated funds are not sufficient to provide medical care for all eligible persons, the department shall use the following priorities in keeping expenditures within appropriations:

(1) limit the increases in reimbursement paid per service for medical care to no more than 10% for each fiscal year of the 1983 biennium to the maximum extent feasible; and

(2) limit eligibility and amount, scope, and duration of medical services provided.

The payment standard for families under the aid to families with dependent children program (AFDC) shall be an equal percentage of the poverty index according to family size. The payment standard for a family of two may not exceed $258 in fiscal 1982 and $280 in fiscal 1983.

Item 5 may be merged into the department of social and rehabilitation services' organizational structure or transferred to another state agency by approval of the governor's office. The legislative finance committee must be informed of any interagency transfers. The appropriation authority must be accounted for by a unique appropriation number in the statewide budgeting and accounting system.

The funding of item 7 is contingent upon passage and approval of HB 258.

The day-care rate per day for homes is not to exceed $6.00 in fiscal 1982 and $6.50 in fiscal 1983. The rate per day is not to exceed $7.00 in fiscal 1982 and $7.50 in fiscal 1983 for day-care centers.

Because of the uncertainty in federal funding, the department should anticipate receiving the level of federal funding for AFDC, Medicaid, and Title XX calculated in the appropriations until funds at the federal level are allocated.

TOTAL HUMAN SERVICES	87,167,203	63,509,639	36,692,156	66,229,905

C. NATURAL RESOURCES AND BUSINESS REGULATION

DEPARTMENT OF AGRICULTURE				
1. Centralized Services	106,606	598,149	107,220	602,190
2. Legislative Audit Fee	10,102	4,898		
3. Rural Development Program		33,553		35,714

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Hail Insurance Unit	1,650	934,112	1,660	937,585
5. Crop and Livestock Unit	47,500	13,900	56,069	13,900
6. Transportation Unit	73,916	50,000	73,383	50,000
7. Wheat Research and Marketing		550,259		578,457
8. Environmental Management Division	246,103	670,921	251,816	684,368
9. Plant Industry Division	420,577	456,886	362,681	466,043
Total Department of Agriculture	906,454	3,312,678	852,829	3,368,257

All indirect cost assessments received from Old West Regional Commission grants must be deposited in the general fund.

DEPARTMENT OF COMMERCE

1. Director's Office		121,432		126,249
2. Centralized Services		270,105		274,427
a. Legislative Audit				50,000
b. Moving Expenses		39,900		
3. Aeronautics Division		798,363		861,883
4. Administrative Support - Economic Development	27,399	86,808	19,194	104,558
5. Business Assistance Bureau	85,579	130,000	89,504	130,000
6. Economic Development Grants	59,000	235,000		
7. Board of Housing		470,496		490,281

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
8. Travel Promotion Program	600,000	100,000	700,000	200,000
9. Coal Board		9,314,904		11,306,975
10. Rail Planning Program	60,119	5,794,329	39,056	3,548,582
11. Community Development Program	229,415	3,893,881	236,180	4,043,553
12. Indian Affairs Program	81,505		82,950	
13. Business Regulation and Licensing Administration	132,598	254,775	141,220	269,329
14. Weights and Measures Program	361,229		344,183	
15. Financial Program	537,070		554,076	
16. Milk Control Program		224,856		234,127
17. Consumer Protection Program	83,684		84,879	
18. Board of Architects		23,796		24,870
19. Board of Barbers		21,979		23,420
20. Board of Chiropractors		13,220		13,895
21. Board of Cosmetologists		97,550		101,536
22. Board of Dentistry		31,231		33,284
23. Electrical Board		59,623		62,942
24. Board of Hearing Aid Dispensers		5,238		5,524
25. Board of Horseracing		212,848		224,455

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
26. Board of Massage Therapists		5,321		5,633
27. Board of Medical Examiners		72,367		77,488
28. Board of Morticians		13,886		14,975
29. Board of Nursing		141,249		145,922
30. Board of Nursing Home Administrators		18,375		19,171
31. Board of Optometrists		12,245		13,006
32. Board of Osteopathic Physicians		801		869
33. Board of Pharmacists		83,173		86,659
34. Board of Plumbers		62,565		64,501
35. Board of Professional Engineers and Land Surveyors		98,548		103,682
36. Board of Public Accountants		121,861		114,538
37. Board of Realty Regulation		259,542		269,579
38. Board of Veterinarians		18,667		19,837
39. Board of Water Well Contractors		18,333		19,381
40. Board of Psychologists		11,301		12,677
41. Board of Sanitarians		4,646		5,004
42. Private Investigators Program		3,897		4,022
43. Board of Landscape Architects		6,791		7,304

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
44. Board of Speech Pathologists and Audiologists		7,342		7,881
45. Board of Radiologic Technologists		8,901		9,385
46. Board of Podiatry Examiners		1,098		1,161
47. Board of Physical Therapy Examiners		4,973		5,278
Total Department of Commerce	2,257,598	23,176,216	2,291,242	23,137,843

The director's office and centralized services shall be operated from a revolving account, with all earmarked and federal accounts assessed a pro rata share of the total expenses. The revolving account shall be initiated with a loan from one of the accounts under the department's supervision and operated on a full accrual basis and in accordance with generally accepted accounting principles.

The department is authorized to reorganize its current organizational structure only after receiving approval from the office of budget and program planning and review by the legislative finance committee.

Included in the weights and measures program appropriation for fiscal 1982 is $5,000 to be available for expenditure only if the cost of a new truck and trailer exceeds $30,000.

Coal impact grants may be granted to local government units only to remedy a situation resulting from coal development. The local government unit must be making a bona fide local effort to provide for its own needs through normal financing channels (taxes, service fees, or bonds).

Those divisions and bureaus of the department of commerce that are moved from private to state-owned office space shall revert the resulting savings in rent, utilities, taxes, and other expenses.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1. Centralized Services Division		3,345,294		3,469,096
2. Legislative Audit		45,000		
3. Purchase of Cessna 180		54,210		

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Ecological Services Division		744,740		759,203
5. Fisheries Division		2,292,268		2,227,383
6. Enforcement Division		2,924,202		2,935,004
7. Game Damage		65,000		65,000
8. Wildlife Division		3,018,696		3,107,075
9. Recreation and Parks Division	587,349	1,417,279	627,177	1,492,042
10. Conservation Education Division		968,677		989,140
11. Administration		463,167		467,167
Total Department of Fish, Wildlife, and Parks	587,349	15,338,533	627,177	15,511,110

None of the funds appropriated to the department may be used for the purchase or study of the purchase of any type of abandoned right-of-way.

Included in the centralized services appropriation is revolving account authority of $1,075,833 in fiscal 1982 and $1,183,417 in fiscal 1983. The revolving accounts must be operated on a full accrual basis and in accordance with generally accepted accounting principles.

An additional $500,000 a year is authorized in centralized services for the purpose of providing expenditure authority for federal and private funds that previously required budget amendments. Funds spent under this authorization must be accounted for separately from regular operations.

The Helena-based pilots shall be delegated enforcement responsibilities whenever they are not required for air transportation purposes.

The administration division appropriation includes:

(a) $80,000 a year for transfer to the department of livestock for predator control

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

(b) $25,000 a year for the department to begin training to initiate the conservation officer concept within the department. A progress report on this effort must be made to the 1983 legislature.

(c) $24,000 a year for uniforms or distinctive clothing for all field personnel outside of the enforcement division.

DEPARTMENT OF STATE LANDS

1. Central Management Program	722,169	250,464	717,917	246,317
2. Legislative Audit	15,000			
3. Reclamation Program		7,368,739		7,894,841
4. Land Administration Program	176,000	60,259	175,000	47,991
5. Resource Development Program		574,934		468,043
Total Department of State Lands	913,169	8,254,396	892,917	8,657,192

The other funds appropriations for the central management program provide for salary and expenses of the Northern Powder River Environmental Impact Statement Team. The eight FTE approved for the team may continue only as long as federal funds are available to provide support.

DEPARTMENT OF LIVESTOCK

1. Centralized Services	73,320	219,962	75,820	227,460
2. Legislative Audit	3,250	9,750		
3. Diagnostic Laboratory Program	294,894	306,839	304,754	316,700
4. Disease Control Program		636,605		635,757
5. Milk and Egg Program	176,096	11,500	183,023	12,000
6. Inspection and Control Program		1,576,968		1,611,730
7. Predator Control Program		278,863		295,881

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
8. Rabies and Rodent Control Program	70,489	15,000	71,018	15,000
Total Department of Livestock	618,049	3,055,487	634,615	3,114,528
DEPARTMENT OF NATURAL RESOURCES				
1. Centralized Services Division	1,059,202	758,243	1,051,051	801,551
2. Legislative Audit	18,400	21,600		
3. Oil and Gas Regulation Division		689,798		693,932
4. Conservation District Supervision Division		441,953		477,377
5. Water Resources Division	1,632,061	2,767,124	1,782,524	2,840,433
6. Forestry Division	3,149,988	2,767,281	2,943,379	2,817,674
7. Energy Division	329,975	3,242,757	350,105	3,502,341
8. Facility Siting Division	208,705	1,500,000	213,189	1,000,000
Total Department of Natural Resources	6,398,331	12,188,756	6,340,248	12,133,308

Included in the facility siting division appropriation of other funds for fiscal 1982 is $500,000 resource indemnity trust fund interest to continue the appropriation of HB 908 of the 1979 legislature. The appropriation allows continuation of studies for the possible construction of a MHD engineering test facility in Montana. Expenditure of these funds is limited to the original appropriation.

The forestry division general fund appropriation for fiscal 1982 includes a $180,000 biennial appropriation to acquire and upgrade firefighting vehicles and equipment for distribution to nine county cooperative fire districts. The districts shall operate and maintain the equipment.

Included in the general fund appropriation in item 5 for fiscal year 1983 is $186,000 for either a grant to an irrigation district formed to operate the Daly ditch water project for the purpose of operating and maintaining the project for 1 year or, if an irrigation district is not formed, for use by the department in administering the abandonment of the project, including the removal of structures.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Included in the oil and gas regulation division appropriation each year is $65,000 of resource indemnity trust fund interest for the purpose of repairing and plugging abandoned oil and gas wells.

All federal Clark-McNary (CM-2) funds received by the department in excess of $250,000 per year will be deposited in the general fund.

PUBLIC SERVICE COMMISSION				
1. General Operations	1,184,442	19,310	1,195,975	19,310
2. Legislative Audit	7,000			
3. Special Audit	50,000			
Total Public Service Commission	1,241,442	19,310	1,195,975	19,310

The appropriation in item 3 will continue the audit and any litigation related to commission docket no. 80.8.55. The appropriation may be spent only for determining the original cost of Montana Power Company's hydroelectric properties or litigation related thereto.

TOTAL NATURAL RESOURCES AND BUSINESS REGULATION	12,922,392	65,345,376	12,835,003	65,941,548

D. DEPARTMENT OF INSTITUTIONS

CENTRAL OFFICE				
1. Director's Office	237,041	28,994	235,510	32,616
2. Alcohol & Drug Abuse Division	194,239	1,348,521	203,871	1,294,514
3. Corrections Division	3,297,327		3,423,996	
4. Management Services Division	797,596	64,328	800,690	64,328
5. Mental Health Division	3,957,049	535,536	4,352,354	540,629
6. Audit			16,145	8,855
7. Building Space	76,713	21,754	77,318	21,926

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
8. Women's Correctional Facility	840,000	———	———	———
Total Central Office	9,399,965	1,999,133	9,109,884	1,962,868

The Montana drug program shall be funded at 32 percent general fund and 68 percent federal funds.

General fund distribution by the mental health division to community mental health programs may not exceed $3,756,453 in fiscal 1982 and $4,147,272 in fiscal 1983. These amounts include pay raises. Sixty thousand dollars of funds appropriated for community mental health programs may be used to support programs provided by the current friends to youth program for emotionally disturbed children.

No general fund money may be used to support the manpower or community support programs.

Funds authorized in item 8 may not be used to establish a women's unit at Mountain View School.

Item 7 contains spending authority necessary to fund the lease agreement and other related costs for the central offices of the department of institutions. When this building is purchased by the state, all appropriated funds in item 7 except $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 in proportion to the time period remaining each fiscal year shall revert.

Item 8 and the amount appropriated in HB 666 for Spruce cottage is for the purpose of obtaining, through use of a state facility, or lease or purchase of a private facility, and the necessary renovation of such facility to house 20 female offenders. This appropriation also includes the operating budget for such facility.

The director of the department of institutions shall attempt to find a suitable facility for the housing of female offenders prior to the special session of the legislature or February 1982, whichever comes first. If such facility is found, the office of budget and program planning and the legislative finance committee shall approve of the site and the facility.

The department shall give an estimate of the biennium cost for the operation of such facility to the legislative finance committee and the office of budget and program planning. If the operational costs will exceed the appropriation in item 8 plus any pay plan funds allocated for the biennium, the department, with concurrence of the legislative finance committee, shall request an appropriation to cover the excess cost from the special session of the legislature or the 1983 legislative session in the event there is no special session.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

If a facility cannot be secured by the beginning of the special session, the department of institutions shall present to the special session of the legislature for its consideration a complete detailed proposal for the site, facility, and total cost of housing 20 female offenders for the remainder of the 1983 biennium.

BOULDER RIVER SCHOOL AND HOSPITAL				
1. General Operations	9,308,901	106,180	9,364,280	101,581
2. Audit	15,000			
Total Boulder River School and Hospital	9,323,901	106,180	9,364,280	101,581
CENTER FOR THE AGED				
1. General Operations	1,939,921	9,458	1,965,887	9,729
2. Audit			7,000	
Total Center for the Aged	1,939,921	9,458	1,972,887	9,729

The amounts of $18,964 in fiscal 1982 and $21,771 in fiscal 1983 of the general fund appropriations must be used for a fire alarm system maintenance contract or be reverted to the general fund.

EASTMONT TRAINING CENTER				
1. General Operations	1,530,951	48,728	1,542,725	49,799
2. Audit			6,500	
Total Eastmont Training Center	1,530,951	48,728	1,549,225	49,799
GALEN STATE HOSPITAL				
1. General Operations	4,405,192	1,306,988	4,366,991	1,366,719
2. Audit	12,000			
Total Galen State Hospital	4,417,192	1,306,988	4,366,991	1,366,719

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
WARM SPRINGS STATE HOSPITAL				
1. General Operations	11,182,794	180,466	11,374,319	190,066
2. Audit			16,000	
Total Warm Springs State Hospital	11,182,794	180,466	11,390,319	190,066

Funds may be transferred between Warm Springs state hospital and Galen state hospital by the budget amendment process. If applicable and warranted, further consolidation may take place between the two facilities.

MOUNTAIN VIEW SCHOOL				
1. General Operations	1,310,400	89,307	1,316,744	93,927
2. Audit			8,000	
Total Mountain View School	1,310,400	89,307	1,324,744	93,927
PINE HILLS SCHOOL				
1. General Operations	1,986,558	525,454	1,972,777	536,519
2. Audit			11,000	
Total Pine Hills School	1,986,558	525,454	1,983,777	536,519
MONTANA STATE PRISON				
1. General Operations	6,854,480	73,041	7,015,342	73,980
2. Ranch		1,384,106		1,398,723
3. Industries	143,500	193,342	78,000	295,671
4. Canteen		250,469		250,521
5. License Plate Factory		491,242		529,593
6. Audit			11,967	3,033

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Total Montana State Prison	6,997,980	2,392,200	7,105,309	2,551,521
SWAN RIVER YOUTH FOREST CAMP				
1. General Operations	639,110	95,773	642,792	96,080
2. Audit			6,000	
Total Swan River Youth Forest Camp	639,110	95,773	648,792	96,080
VETERANS' HOME				
1. General Operations	486,575	714,000	470,033	727,500
2. Audit			6,000	
Total Veterans' Home	486,575	714,000	476,033	727,500
BOARD OF PARDONS				
1. General Operations	100,242		102,106	
2. Audit	2,000			
Total Board of Pardons	102,242		102,106	

Personal services expenditures may not exceed the following level plus pay plan appropriations or budget amendments from unanticipated funds for each institution or program listed.

	Fiscal 1982	Fiscal 1983
Director's Office	226,892	226,892
Alcohol and Drug Abuse Division	530,438	530,438
Corrections Division	1,653,652	1,653,996
Management Services Division	697,809	686,221
Mental Health and Residential Services	344,378	344,378
Boulder River School and Hospital	7,666,835	7,666,835
Center for the Aged	1,491,662	1,491,662
Eastmont Training Center	1,311,589	1,311,589
Galen State Hospital	4,694,991	4,694,991
Mountain View School	1,155,261	1,155,498
Pine Hills School	2,019,866	1,975,381

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Montana State Prison			5,062,818	5,076,689
Swan River Youth Forest Camp			479,892	479,989
Veterans' Home			882,356	882,538
Warm Springs State Hospital			9,266,217	9,266,217
Board of Pardons			80,004	80,004

If utilities expenditures exceed the amounts listed below, the institution may ask for a supplemental appropriation. If utilities do not exceed the anticipated amounts, the difference will be reverted to the general fund.

	Fiscal 1982	Fiscal 1983
Boulder River School and Hospital	484,045	542,130
Center for the Aged	85,125	95,340
Eastmont Training Center	47,989	53,748
Galen State Hospital	326,794	366,010
Mountain View School	47,911	53,660
Pine Hills School	114,992	126,422
Montana State Prison	239,486	267,766
Swan River Youth Forest Camp	45,253	50,683
Veterans' Home	91,286	102,241
Warm Springs State Hospital	724,971	811,968
Corrections Division	22,401	25,090

TOTAL DEPARTMENT OF INSTITUTIONS				
	49,317,589	7,467,687	49,394,347	7,686,309

E. OTHER EDUCATION

BOARD OF PUBLIC EDUCATION		
1. Administration	79,104	79,020
2. Fire Services Training School	178,478	173,406
Total Board of Education	257,582	252,426

The board of public education shall be provided office space free of charge in the building leased by the state and paid from the appropriation to the commissioner of higher education. The fire service training school shall be provided office, storage, and classroom space, inclusive of weekend janitorial service, in the Great Falls vocational-technical center at no charge.

PUBLIC SCHOOL SUPPORT		
1. Special Education	23,254,921	25,347,864

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Special Education Emergency Contingency	500,000		500,000	
3. Audiological Services	688,614		750,589	
Total Public School Support	24,443,535		26,598,453	

Item 1 is for foundation and permissive support of the maximum-budget-without-a-vote for special education.

Item 2 is for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction a child-study team report and an individual educational plan for each child relating to this unforeseen expense and a current listing of programs, case loads, and related costs. The appropriation in item 2 is for the biennium and the specific amounts may be transferred between fiscal years.

Item 3 is for purchase of audiological services by the office of public instruction. These amounts may not be transferred between fiscal years. Any unused amounts revert at the end of the fiscal year.

Notwithstanding other provisions of law, the superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds $51,041,988 in the 1983 biennium.

Federal funds to support special education programs in excess of $5,110,000 during the 1983 biennium shall be placed in a reserve fund and not spent until appropriated by the 1983 legislature.

SUPERINTENDENT OF PUBLIC INSTRUCTION, VOCATIONAL-TECHNICAL CENTERS

1. Billings Center				
a. Personal Services	434,969	490,694	487,031	521,942
b. Operating Expenses	133,475	166,368	194,230	208,152
c. Equipment	6,288	7,196	6,454	7,030
d. Audit Costs	14,000			

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Butte Center				
a. Personal Services	588,475	304,643	663,762	327,519
b. Operating Expenses	76,437	46,300	119,901	59,162
c. Equipment	14,637	7,513	14,833	7,317
d. Audit Costs	13,000			
3. Great Falls Center				
a. Personal Services	539,848	360,799	602,669	379,037
b. Operating Expenses	128,719	86,028	176,418	119,759
c. Equipment	23,449	15,751	31,182	18,718
d. Audit Costs			14,000	
4. Helena Center				
a. Personal Services	898,055	429,643	990,168	457,023
b. Operating Expenses	254,922	121,958	347,259	167,205
c. Equipment	38,958	18,642	44,438	20,412
d. Audit Costs			15,000	
5. Missoula Center				
a. Personal Services	917,631	526,547	997,856	576,298
b. Operating Expenses	217,738	133,548	283,644	163,814
c. Equipment	56,276	32,194	32,102	18,613
d. Audit Costs	15,000			
6. Office of Budget and Program Planning CETA Contingency Funds	44,000			

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Total Vocational-Technical Centers	4,415,877	2,747,824	5,020,947	3,052,001

The superintendent of public instruction may transfer funds between personal services, operations, and equipment within each vocational-education center or between vocational-education centers. The intent of the legislature is that these appropriated funds not provide for salary increases at the vocational-education centers above the state pay plan for fiscal years 1982 and 1983.

Receipt of state funds appropriated to the five technical centers is contingent upon each county in which the center resides levying 1.5 mills each fiscal year. Millage received by the centers from the 1.5 mill levy over $765,101 in fiscal 1982 and $804,733 in fiscal 1983 will revert a like amount to the general fund each year.

Item 6 is to be distributed to the Billings center if CETA funds are not available to the center in fiscal 1982.

OFFICE OF PUBLIC INSTRUCTION

1. Office of Public Instruction	1,566,750	3,209,704	1,577,805	3,286,040
2. Audit Costs			50,000	
3. School Transportation	4,724,445		5,019,250	
4. School Lunch	731,494		807,449	
5. Adult Education	121,881		132,851	
6. Secondary Vocational Education	1,500,000			
7. Building Space	116,897	10,740	130,662	7,911
Total Office of Public Instruction	8,761,467	3,220,444	7,718,017	3,293,951

Other appropriated funds in item 1 contain $369,182 in fiscal 1982 and $374,735 in fiscal 1983 for internal transfers of indirect costs. General fund money shall revert in the amount indirect costs in excess of these amounts are recovered.

Item 6 is for the biennium.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 7 contains the spending authority necessary to fund the lease agreement and other related costs of the office of public instruction building at 1300 Eleventh Avenue. When this building is purchased by the state, all appropriated funds in item 7 except $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 in proportion to the time period remaining each fiscal year shall revert.

All revenues received in the state traffic education account under provisions of 20-7-504 are appropriated to be distributed as provided in 20-7-506.

ADVISORY COUNCIL FOR VOCATIONAL EDUCATION

1. General Operations		92,000		94,000
2. Audit		2,000		
Total Advisory Council for Vocational Education		94,000		94,000

STATE LIBRARY

1. General Operations	332,472	759,794	417,771	809,245
2. Administration Program - Moving Costs	20,000			
3. Library Networking Operations		77,300		73,549
4. Audit	3,300	2,700		
Total State Library	355,772	839,794	417,771	882,794

Item 2 is for the biennium ending June 30, 1983.

Item 3 consists of earmarked funds generated under 15-35-108(2)(i). These funds are appropriated for networking operations at the state library. All other funds generated pursuant to this section shall be distributed to the library federations.

MONTANA HISTORICAL SOCIETY

1. Administration, Library, Archives, and Museum Programs	613,113	100,800	619,701	100,800
2. Historic Sites Program	56,422	56,423	57,630	57,630

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Publications Program	35,162	123,944	36,827	129,812
4. Merchandising Program		284,337		287,515
5. Audit	2,899	2,101	8,728	6,272
Total Montana Historical Society	707,596	567,605	722,886	582,029

Item 4 contains $20,000 in fiscal year 1982 and $20,000 in fiscal year 1983 for internal transfers of profits generated by the merchandising program.

MONTANA ARTS COUNCIL				
1. General Operations	76,222	222,270	81,719	230,628
2. Local Community Grants	20,275		20,275	
3. Audit	3,500	3,500		
Total Montana Arts Council	99,997	225,770	101,994	230,628
SCHOOL FOR THE DEAF AND BLIND				
1. General Operations	1,486,843	510,988	1,540,847	514,247
2. Audit	15,000			
Total School for the Deaf and Blind	1,501,843	510,988	1,540,847	514,247
TOTAL OTHER EDUCATION	40,543,669	8,206,425	42,373,341	8,649,650

F. HIGHER EDUCATION

For units of the university system other than the office of the commissioner of higher education, the appropriations made under the column heading "Other Appropriated Funds" are from funds within current unrestricted funds unless otherwise indicated.

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

All funds, other than plant funds and those specifically appropriated herein, may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of a comprehensive program budget containing a detail of revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund accounting entities shall be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, and operation and maintenance of plant.

Included within other appropriated funds to the six institutions is the sum of $12,488,450 in fiscal year 1982 and $13,579,452 in fiscal year 1983 from revenues generated under the provisions of House Bill 191, 46th legislature.

The amounts shown for critical area faculty salary adjustments are appropriated to the colleges and universities contingent upon approval by the board of regents of a salary distribution plan or negotiated agreement for each campus. It is the legislature's intent that the critical area faculty salary adjustment funds be expended in those academic disciplines where difficulty is experienced recruiting or retaining faculty due to external market conditions.

BOARD OF REGENTS				
	23,029		25,104	
COMMISSIONER OF HIGHER EDUCATION				
1. Office Administration	624,554	26,705	633,221	27,458
2. WAMI	1,491,997		1,625,272	
3. WICHE - Student Assistance	627,100	911,000	500,800	1,143,000
4. WICHE - Administrative Dues	46,300		50,000	
5. University of Minnesota - Rural Dentistry	153,600		168,000	
6. SSIG	175,000	211,592	175,000	211,592
7. NDSL	100,000		100,000	

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
8. Audit	6,000			
Total Commissioner of Higher Education	3,224,551	1,149,297	3,252,293	1,382,050
COMMUNITY COLLEGES				
1. Miles Community College	779,222		819,247	
2. Dawson Community College	587,208		639,498	
3. Flathead Valley Community College	1,127,029		1,185,178	
Total Community Colleges	2,493,459		2,643,923	
BUREAU OF MINES	1,210,783	141,600	1,228,570	155,800
AGRICULTURAL EXPERIMENT STATION				
1. Agricultural Experiment Station	4,448,576	2,275,276	4,570,687	2,359,167
2. United States Range Station		901,926		927,288
Total Agricultural Experiment Station	4,448,576	3,177,202	4,570,687	3,286,455
COOPERATIVE EXTENSION SERVICE	1,644,433	1,631,270	1,607,040	1,755,623
FORESTRY AND CONSERVATION EXPERIMENT STATION	500,773		594,407	
MONTANA STATE UNIVERSITY				
1. Instruction	10,754,709	7,587,801	10,587,516	7,793,104
2. Critical Area Faculty Salary Adjustment	186,191	128,809	198,595	143,405

The above appropriation provides 53 percent of the total unrestricted budgets for the community colleges that shall be approved by the board of regents.

The general fund appropriation for each community college includes 53 percent of the total audit cost. The remaining audit costs shall be paid from local funds. Audit costs are not to exceed $17,000 for each unit for the biennium.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Organized Research	412,098	285,092	419,429	302,870
4. Public Service	5,159	3,569	5,017	3,623
5. Academic Support, Student Services, and Institutional Support	5,580,112	3,860,358	6,003,155	4,334,873
6. Operation and Maintenance of Plant	2,174,812	1,504,549	2,285,575	1,650,411
7. Scholarships and Fellowships	392,782	271,729	431,975	311,929
8. Audit Costs	18,840	13,035	6,170	4,455
Total Montana State University	19,524,703	13,654,942	19,937,432	14,544,670

Total audit costs are estimated to be $85,000 for the biennium. Fifty percent of those costs are to be paid from funds other than those appropriated by the legislature.

UNIVERSITY OF MONTANA				
1. Instruction	8,773,903	5,460,204	8,732,602	5,692,301
2. Critical Area Faculty Salary Adjustment	152,343	92,657	162,479	103,521
3. Organized Research	220,080	133,856	222,794	141,951
4. Public Service	100,589	61,180	102,605	65,373
5. Academic Support, Student Services, and Institutional Support	4,899,936	2,980,227	5,180,245	3,300,525
6. Operation and Maintenance of Plant	2,370,108	1,441,542	2,507,881	1,597,864
7. Scholarships and Fellowships	394,307	239,825	416,972	265,669
8. Audit Costs	19,820	12,055	6,490	4,135

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Total University of Montana	16,931,086	10,421,546	17,332,068	11,171,339

Total audit costs are estimated to be $85,000 for the biennium. Fifty percent of those costs are to be paid from funds other than those appropriated by the legislature.

EASTERN MONTANA COLLEGE

1. Instruction	2,876,473	1,585,378	2,754,541	1,727,227
2. Critical Area Faculty Salary Adjustments	43,158	22,842	44,940	27,060
3. Public Service	22,797	12,065	22,155	13,340
4. Academic Support, Student Services, and Institutional Support	2,201,727	1,165,294	1,984,834	1,195,140
5. Operation and Maintenance of Plant	1,039,378	550,105	1,049,692	632,058
6. Scholarships and Fellowships	130,359	68,994	125,640	75,652
7. Audit Costs	7,283	3,855	14,114	8,498
Total Eastern Montana College	6,321,175	3,408,533	5,995,916	3,678,975

Total audit costs are estimated to be $45,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

NORTHERN MONTANA COLLEGE

1. Instruction	1,784,498	757,333	1,767,099	816,710
2. Critical Area Faculty Salary Adjustment	11,359	4,641	12,107	5,393
3. Public Service	6,376	2,605	6,388	2,845
4. Academic Support, Student Services, and Institutional Support	877,010	358,345	943,010	420,070
5. Operation and Maintenance of Plant	440,490	179,984	451,192	200,986

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
6. Scholarships and Fellowships	86,263	35,247	82,950	36,950
7. Audit Costs	13,977	5,711	4,539	2,023
Total Northern Montana College	3,219,973	1,343,866	3,267,285	1,484,977

Total audit costs are estimated to be $35,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

WESTERN MONTANA COLLEGE

1. Instruction	730,977	369,544	720,410	388,313
2. Critical Area Faculty Salary Adjustment	5,413	2,587	5,960	3,040
3. Academic Support, Student Services, and Institutional Support	645,051	308,224	676,244	344,918
4. Operation and Maintenance of Plant	343,219	164,000	354,136	180,628
5. Scholarships and Fellowships	32,118	15,347	33,035	16,850
6. Audit Costs	4,440	2,122	13,038	6,650
Total Western Montana College	1,761,218	861,824	1,802,823	940,399

Total audit costs are estimated to be $35,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY

1. Instruction	1,648,006	1,096,383	1,695,835	1,127,568
2. Critical Area Faculty Salary Adjustment	104,903	69,212	112,992	74,514
3. Organized Research	23,912	15,776	26,265	17,321
4. Academic Support, Student Services, and Institutional Support	906,491	598,075	1,156,466	762,650

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
5. Operation and Maintenance of Plant	631,925	416,925	673,885	444,405
6. Scholarships and Fellowships	100,090	66,037	104,423	68,863
7. Audit Costs	10,168	6,707	10,169	6,706
Total Montana College of Mineral Science and Technology	3,425,495	2,269,115	3,780,035	2,502,027

Total audit costs are estimated to be $45,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

Funds appropriated to the colleges and universities in all items except audit costs and critical area faculty salary adjustments may be transferred between items within a fiscal year through budget amendment approved by the board of regents.

TOTAL HIGHER EDUCATION	64,729,254	38,059,195	66,037,583	40,902,315
GRAND TOTAL	294,805,799	420,118,245	246,061,712	432,417,030

Section 20. **Effective date.** This act is effective July 1, 1981.

Approved May 21, 1981.

HOUSE BILL NO. 542

AN ACT TO APPROPRIATE MONEY TO THE MONTANA BUREAU OF MINES AND GEOLOGY FOR A GROUND- AND SURFACE-WATER STUDY OF PORTIONS OF SWEET GRASS AND STILLWATER COUNTIES; PROVIDING THAT THE APPROPRIATION IS CONTINGENT UPON RECEIPT OF FEDERAL MATCHING FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation contingency.** (1) There is appropriated for the biennium ending June 30, 1983, $28,000 from the renewable resource development clearance fund account to the Montana bureau of mines and geology to match federal funds for a cooperative ground- and surface-water study with the U.S. geological survey of those portions of Sweet Grass and Stillwater Counties south of the Yellowstone River.

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(2) This appropriation is made contingent upon the receipt of $46,000 in federal matching funds.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1981.

HOUSE BILL NO. 560

AN ACT TO APPROPRIATE MONEY TO THE STATE BOARD OF EXAMINERS AND THE DEPARTMENT OF JUSTICE TO SATISFY VARIOUS COURT JUDGMENTS OR CLAIMS AGAINST THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following funds are appropriated to the state board of examiners from the sources indicated to either satisfy court judgments against the state or pay for the settlement of legal actions or claims:

(1) from the general fund, $7,500 or so much thereof as may be necessary to pay the claim of the Roman Catholic Bishop for damages to water lines caused by lack of heat in a state building after sale but prior to delivery of possession;

(2) from the general fund, $242,809.18 or so much thereof as may be necessary to satisfy the judgment in Cause No. 41336, County of Lewis and Clark, in favor of Geraldine Strong;

(3) from the general fund, $1,500 or so much thereof as may be necessary to satisfy the claim of Douglas B. Remick for reimbursement of an application fee paid to the department of business regulation.

Section 2. **Appropriation.** There is appropriated from the general fund to the department of justice the sum of $66,619.40, or so much thereof as may be necessary to satisfy the judgment against the State of Montana and in favor of Leaseamerica Corporation of Wisconsin entered on June 20, 1980, by the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, in Cause No. 42658, entitled "Leaseamerica Corporation of Wisconsin, Plaintiff, vs. State of Montana, Defendant" and affirmed by the Supreme Court of Montana on March 16, 1981, in Cause No. 80-269.

Section 3. **Appropriation nonjudgmental.** By appropriating the above sums, the legislature is not passing on the merits of the above four cases.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

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HOUSE BILL NO. 568

AN ACT TO APPROPRIATE $200,000 FROM THE GENERAL FUND TO THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR GIFTED AND TALENTED CHILDREN PROGRAMS OPERATED BY VARIOUS SCHOOL DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $200,000 from the general fund to the office of the superintendent of public instruction for the purpose of funding gifted and talented children programs operated by various school districts under the provision of Title 20, chapter 7, part 9, for the biennium ending June 30, 1983. Funds appropriated are to be used for grants only. No administrative costs are to be taken from this appropriation.

Approved April 23, 1981.

HOUSE BILL NO. 601

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE RENEWABLE RESOURCE DEVELOPMENT CLEARANCE FUND ACCOUNT FOR EMERGENCY ASSISTANCE IN REPLACEMENT OF THE ST. CLAIR CREEK SYPHON IN THE GLEN LAKE IRRIGATION DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** An amount of $130,000 is appropriated to the department of natural resources and conservation from the renewable resource development clearance fund account created within the bond proceeds and insurance clearance fund established in 17-2-102 to be used for a grant to the Glen Lake irrigation district for the purpose of replacing the St. Clair creek syphon, notwithstanding any provision of law that would otherwise prohibit a renewable resource development grant to an irrigation district. The grant is to be administered under the renewable resource development program and must be made before June 30, 1983, or the money will revert to the renewable resource development clearance fund account. Upon an application for the grant by the Glen Lake irrigation district, the department of natural resources and conservation must within 180 days make the grant provided all conditions have been met. Any funds not so used must be returned to the department of natural resources and conservation for deposit into the renewable resource development clearance fund account.

Section 2. **Conditions of the grant.** Disbursement of funds under this act may be made only after:

(1) the project has been authorized by other financial sponsors, if any;

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(2) initial funding from other sources, if any, has been committed for construction; and

(3) an agreement between the department of natural resources and conservation and the applicant has been executed governing the administration and disposal of funds.

Approved April 22, 1981.

HOUSE BILL NO. 603

AN ACT TO REAPPROPRIATE FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REHABILITATE THE COONEY DAM OF THE ROCK CREEK PROJECT LOCATED NEAR RED LODGE IN CARBON COUNTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is reappropriated from the resource indemnity trust fund interest account to the department of natural resources and conservation for the biennium ending June 30, 1983, $441,330 for the rehabilitation of Cooney Dam from the biennium ending June 30, 1981. The total expenditure of resource indemnity trust fund interest may not exceed $591,300 for the two bienniums ending June 30, 1983, and shall be used for the rehabilitation of Cooney Dam as set forth in a report entitled "Rehabilitation of Cooney Dam Spillways" and submitted to the Legislature in January 1979.

(2) In addition, there is appropriated $1,447,000 from a federal water and power resource service loan and $260,000 from a federal land and water conservation grant.

Approved April 29, 1981.

HOUSE BILL NO. 611

AN ACT TO APPROPRIATE FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR PUBLIC SCHOOL SUPPORT OTHER THAN FOR SPECIAL EDUCATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** All revenues received under the provisions of 20-9-343 for state equalization aid are appropriated to the superintendent of public instruction for the biennium ending June 30, 1983, for public school support other than for special education.

Section 2. **Contingency appropriation.** There is appropriated from the general fund $32,000,000 for the biennium ending June 30, 1983, to be

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used to the extent funds appropriated in section 1 are insufficient to finance the maximum-budget-without-a-vote for public schools excluding special education.

Approved May 11, 1981.

HOUSE BILL NO. 617

AN ACT TO APPROPRIATE $485,000 TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE WATER RIGHT ADJUDICATION ACCOUNT OF THE EARMARKED REVENUE FUND FOR THE OPERATION OF THE RESERVED WATER RIGHTS COMPACT COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the department of natural resources and conservation $485,000 from the water rights adjudication account of the earmarked revenue fund for the operation of the reserved water rights compact commission for the biennium ending June 30, 1983.

Approved April 21, 1981.

HOUSE BILL NO. 666

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1983; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds

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appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds which were not available for consideration by the legislature.

(4) "BPICA" means account number 06142 in the bond proceeds and insurance clearance fund; "FPRA" means federal and private revenue account; "ERA" means earmarked revenue account; and "other appropriated funds" means money other than general fund or BPICA money that accrues under provisions of law to an agency indicated herein.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 47th legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Additional funding.** If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceed the amount appropriated by the legislature if the decrease does not jeopardize the receipt of the funds to be received from other sources.

Section 4. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund. Should federal funds for Makoshika State Park exceed $21,000, coal tax appropriations in an amount equal to the excess will be reverted.

Section 5. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are hereby reappropriated until June 30, 1983, for the purposes for which originally appropriated.

Section 6. **Construction and maintenance appropriation.** The following money is appropriated from indicated accounts, including interest earnings from investment of the proceeds of long-range building bonds issued under the authority of HB 563, 1981 session to the director of the department of administration:

Agency/Program	BPICA	Other Appropriated Funds
Department of Administration		
Replace roofs		$ 70,000
Retrofit state buildings for energy conservation	$2,250,000	
Replace elevator, Surplus Property Building	55,000	
Plan Natural Resources Building	400,000	
Acquire office facilities, Helena		2,150,000
Land acquisition and grounds improvements, Capitol Complex		50,000

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Improve water system, Capitol Complex	380,000	
Safety Improvements, Cogswell Building	60,400	
Board of Education		
Miscellaneous maintenance, Historical Society	88,000	
Complete cottage, School for the Deaf and Blind	700,000	
Department of Fish, Wildlife, and Parks		
Regional headquarters maintenance		20,000
Fishing access site protection		100,000
Lewis & Clark Caverns improvements		50,000
Giant Springs Heritage State Park improvements		300,000
Develop wildlife management areas		96,000
Rosebud Battlefield improvements		20,000
Bannack State Monument		25,000
Makoshika State Park improvements		81,000
Recreation area paving, Placid and Salmon Lakes		200,000
Purgatory Hill State Monument improvements		34,000
Canyon Ferry Recreation Area Improvements	124,500	124,500
Council Groves State Monument improvements		110,000
Acquisition and development of cemetery at old Fort Custer site in Big Horn County	50,000	50,000
Fort Owen Acquisition or Development		10,000
Department of Highways		
Miscellaneous maintenance and construction		500,000
Department of Institutions		
Modify toilets, Spratt Building, Warm Springs	18,000	
General Maintenance, Boulder	251,200	
Replace roofs, state institutions	245,000	
Modify bathrooms and laundry, Eastmont	57,000	
Construct multipurpose building, Swan River	400,000	
Kitchen repairs, Veterans' Home	21,300	
Maintenance and life/safety repairs, Warm Springs	149,200	
Water tower maintenance, institutions	45,000	

Maintenance and repairs, Galen	154,000	
Sprinkler system, Veterans' Home	47,000	
Sewage treatment plant, Warm Springs	348,050	1,059,188
Enlarge pharmacy, Center for the Aged	11,885	
Prison Chapel Design	25,000	
Spruce Cottage Remodel, Mountain View	67,800	
Upgrade prison perimeter security	59,000	
Pine Hill S.I.D.	9,872	
Department of Justice		
Miscellaneous repairs, Registrar's Bureau	10,000	
Department of Military Affairs		
Construct Armory, Harlowton	179,500	415,500
Construct Armory, Havre	164,500	415,500
Auxiliary heating system, Fort Harrison	2,500	7,500
Weatherproof CSMS, Fort Harrison	6,250	18,750
Sealcoat taxiways, Military Affairs	3,000	9,000
Repair Boiler, Deer Lodge	4,000	
Repair Wall, Fort Harrison	25,000	
Boiler, Helena Armory	40,000	
Armory Addition, Butte		615,000
University System		
University System maintenance	1,038,050	
Handicapped accessibility, University System	500,000	
Complete Science Building, Montana Tech.	200,000	
Remodel Cowan Hall, Northern Montana College	150,000	
Computer site modification, EMC	100,000	
Farm Mechanics Bldg., NMC		150,000
Construct Clinical Psychology Bldg., UM	440,000	
Remodel Craft Bldg., WMC	200,000	
Lubrecht Forest Exp. Station		115,000
AES Facility, Sidney	85,000	
Construct Laboratory Animal Facility, MSU	2,180,000	
Department of Natural Resources and Conservation		
Maintenance, DNRC	25,000	

Construction of the animal laboratory facility at MSU will be financed with interest generated from investment of proceeds of bonds sales authorized by HB 563. Construction will not begin until bonds are sold.

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Section 7. **Land acquisition appropriation.** The following money is appropriated from the indicated accounts for the purposes of land acquisition to the director of the department of fish, wildlife, and parks:

Fishing access acquisitions	2,350,000
Acquire wildlife habitat	750,000

Section 8. **Appropriation of proceeds from the sale of long-range building bonds.** The following money is appropriated from the BPICA to the director of the department of administration, contingent upon the authorization of the sale of long-range building bonds by the legislature as provided in 17-5-402 and 17-5-403, and the sale of the bonds by the state board of examiners:

Renovate State Capitol building	6,750,000
Construct Gymnasium, School for the Deaf and Blind	2,300,000
Construct cottage, School for the Deaf and Blind	2,000,000
Construct Polson Job Service office	500,000
Construct Hamilton Job Service office	500,000
Construct Visual Communications Building, MSU	4,598,000
Remodel and addition to Cisel Hall, EMC	1,190,000
Construct fine arts facility, UM	7,500,000
Construct vo-tech center, Butte	3,769,505
Construct Veterans Nursing Facility	1,850,000
Children's Unit, Billings	2,626,000
Workers' Compensation Building	4,000,000

Section 9. **Other funds for fine arts facility.** (1) There is appropriated an additional $1,100,000 from the federal and private revenue account or from regent's building fees for the construction of the fine arts facility which shall be constructed as a complete facility with the appropriations contained in this act. Funds appropriated in this section shall be expended before expenditure of state bond proceeds for construction.

(2) Funds may be advanced from the bond proceeds for planning, not to exceed $450,000.

Section 10. **Repayment of appropriations.** (1) Funds for the following project are appropriated on the condition that the amounts appropriated be repaid to the long-range building program, bond proceeds and insurance clearance account with no payment to be made until after June 30, 1983:

Computer site modification, EMC

(2) The terms of the repayment of the above appropriations should be approved by the director of the department of administration prior to expenditure of the amounts appropriated.

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Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

HOUSE BILL NO. 709

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE RENEWABLE RESOURCE DEVELOPMENT CLEARANCE FUND ACCOUNT FOR VARIOUS PROJECTS UNDER THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM AND SPECIFYING CERTAIN CONDITIONS UPON THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated to the department of natural resources and conservation from the renewable resource development clearance fund account for the following projects under the renewable resource development program for the biennium ending June 30, 1983:

(1) a grant to the Cascade County conservation district for the Muddy Creek erosion control program: $300,000;

(2) a grant to the Buffalo Rapids irrigation district for the Buffalo Rapids irrigation project: $180,000;

(3) a grant to the East Bench irrigation district (gravity company) for the East Bench irrigation project: $490,000;

(4) a grant to the department of health and environmental sciences (solid waste bureau) for the program for recycling and resource recovery using solid waste: $350,000;

(5) a grant to the department of health and environmental sciences (water quality bureau) for feasibility and design for the implementation of water quality plans: $41,000;

(6) a grant to Anaconda-Deer Lodge County for the Georgetown Lake weed control project: $35,362;

(7) a grant to the Carbon County conservation district for the Bluewater Creek erosion control program: $121,000;

(8) a grant to the city of Lewistown for the East Fork reservoir recreation area project: $28,756;

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(9) a grant to Lubrecht experimental forest, university of Montana school of forestry for the Lubrecht forest second growth management project: $120,000;

(10) a grant to the triangle conservation district for the saline seep control project: $275,000;

(11) a grant to the department of natural resources and conservation, (conservation districts division) for the leafy spurge weed control project: $30,000;

(12) a grant to the Blue Ribbons of the Big Sky areawide planning organization for the Ennis Lake thermal problem control project: $125,000;

(13) a grant to the department of natural resources and conservation for the rangeland resource development program: $350,000;

(14) a grant to the city of Bozeman for the Mystic Lake dam repair project: $60,000 or the amount of the award of the bid, whichever is less;

(15) (a) a grant to the department of natural resources and conservation for the small water projects construction loan program administered by the department in accordance with the water development program, sections 1 through 26 of Senate Bill No. 409: $350,000; or

(b) if Senate Bill No. 409 is not passed and approved, for other water development projects, at the discretion of the department: $350,000;

(16) a grant to the department of natural resources and conservation for engineering and financial feasibility plans for a dam on Pattengail Creek as described in a department report entitled, "Water Storage in the Big Hole: A Recommendation": $75,000;

(17) a grant to the department of natural resources and conservation for development of a water use data system as recommended by the water policy review advisory council: $125,000;

(18) a grant to the department of natural resources and conservation to develop a strategy to protect Montana's water from downstream uses and insure water availability for Montana's future needs as recommended by the water policy review advisory council: $85,000;

(19) a grant to the department of fish, wildlife, and parks to replace, renovate, and upgrade the lighting system in Lewis and Clark Caverns State Park: $50,000;

(20) a grant to the City of Glasgow and Valley County, jointly, for a feasibility study of development of water supplies for municipal and irrigation purposes: $35,000;

(21) a grant to the Teton Ridge water association to establish a rural water delivery system for domestic and livestock use: $150,000;

(22) any unexpended grant funds remaining from the grant appropriated for the triangle area conservation district saline seep reclamation program, the Deer Lodge South beautification project, Cover Irrigation Company irrigation system repair project, and the North Boulder drainage district

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multipurpose reservoir from the biennium ending June 30, 1981, are reappropriated.

Section 2. **Conditions of grants.** Disbursement of funds under this act shall be made only after:

(1) the projects have been authorized by other financial sponsors, if any;

(2) initial funding from other sources, if any, has been committed for construction; and

(3) an agreement between the department of natural resources and conservation and the applicant has been executed governing the administration and disposal of funds.

Section 3. **Reversion of funds.** If a condition provided for in section 2 is not met, the funds appropriated for the associated project revert to the renewable resource development clearance fund account.

Approved May 1, 1981.

HOUSE BILL NO. 801

AN ACT TO INCREASE AGENCY BUDGETS DURING THE BIENNIUM ENDING JUNE 30, 1981, WHICH INCREASES WOULD USUALLY BE MADE BY BUDGET AMENDMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Increase in spending authority.** The following money is appropriated for the fiscal year ending June 30, 1981:

Agency and Program	Amount	Fund
DEPARTMENT OF LIVESTOCK		
Inspection and Control	$ 100,000	Earmarked Revenue
Predator Control	60,000	Earmarked Revenue
DEPARTMENT OF NATURAL RESOURCES		
Energy Division	5,000	Federal and Private Revenue
Energy Division	2,500,000	Earmarked Revenue

Funds included in the above appropriation are not committed to any of the tentatively approved grants submitted by the department.

The department may commit funds for demonstration purposes only when in its judgment such expenditures or commitments have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:

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Agency and Program	Amount	Fund

(a) previous commitments of similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the location of the proposed demonstration project;

(c) the proposed demonstration project would not further the purpose of 90-4-101.

The department shall submit a report of expenditures to the environmental quality council for review and evaluation. The environmental quality council shall make such recommendations as it considers necessary to assure the greatest possible benefit of the program to the people of the state as a whole.

Energy Division	165,898	Federal and Private Revenue
Energy Division	25,935	Federal and Private Revenue
Energy Division	26,829	Federal and Private Revenue
Water Resources	6,918	Federal and Private Revenue
Water Resources	39,732	Federal and Private Revenue
Water Resources	118,000	Federal and Private Revenue
Water Resources	13,682	Federal and Private Revenue
Water Resources	330,608	Federal and Private Revenue
Facility Siting	80,652	Earmarked Revenue
Facility Siting	8,241	Earmarked Revenue
Facility Siting	25,000	Earmarked Revenue
Energy Division	81,000	Federal and Private Revenue
Forest Resources	22,370	Earmarked Revenue
Forest Resources	6,000	Federal and Private Revenue
Forest Resources	13,836	Federal and Private Revenue
MONTANA HISTORICAL SOCIETY		
Museum and Galleries	26,000	Federal and Private Revenue
Administration	13,000	Federal and Private Revenue
STATE LIBRARY		
General Library Services	5,516	Federal and Private Revenue

Agency and Program	Amount	Fund
DEPARTMENT OF REVENUE		
Property Valuation	90,000	Federal and Private Revenue
Recovery Services	148,739	Federal and Private Revenue
Legal	17,000	Federal and Private Revenue
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Health Services	937,740	Federal and Private Revenue
Health Services	132,695	Federal and Private Revenue
Environmental Health	22,352	Federal and Private Revenue
Communicable Disease	19,670	Federal and Private Revenue
Environmental Health	170,000	Federal and Private Revenue
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES		
Assistance Payments	625,051	Federal and Private Revenue
Eligibility Determination	46,236	Federal and Private Revenue
Eligibility Determination	54,278	Revolving
DEPARTMENT OF ADMINISTRATION		
Communications	23,932	Revolving
Investments	9,000	Revolving
Teachers' Retirement Division	2,500	Earmarked Revenue
PERS Program	99,157	Earmarked Revenue
PERS Program	9,000	Earmarked Revenue
Architecture and Engineering	9,000	Revolving
Housing	19,241	Revolving
Workers' Compensation Judge	9,300	Earmarked Revenue

The appropriation to Teachers' Retirement Division in the amount of $2,500 and the appropriation to PERS in the amount of $9,000 shall be contingent upon the passage of HB 45 and HB 674.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS		
Wildlife	10,500	Federal and Private Revenue
Enforcement	165,000	Earmarked Revenue

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Agency and Program	Amount	Fund
Centralized Services	1,200,000	Revolving
DEPARTMENT OF JUSTICE		
Fire Marshal	11,280	Federal and Private Revenue
DEPARTMENT OF HIGHWAYS		
General Operations	161,928	Earmarked Revenue
General Operations	54,450	Earmarked Revenue
General Operations	25,861	Earmarked Revenue
General Operations	117,814	Federal and Private Revenue
Motor Pool	141,500	Revolving
Equipment Bureau	735,000	Revolving
OFFICE OF PUBLIC INSTRUCTION		
Chief State School Officer	317,501	Federal and Private Revenue
DEPARTMENT OF AGRICULTURE		
Plant and Industry	4,968	Federal and Private Revenue
Transportation	16,600	Federal and Private Revenue
Environmental Management	1,100	Federal and Private Revenue
DEPARTMENT OF STATE LANDS		
Central Management	300,000	Federal and Private Revenue
MOUNTAIN VIEW SCHOOL		
Care and Custody	8,815	Federal and Private Revenue
Care and Custody	255	Federal and Private Revenue
MONTANA STATE PRISON		
Ranch and Dairy	66,437	Revolving
Care and Custody	1,600	Federal and Private Revenue
Care and Custody	255	Federal and Private Revenue
SWAN RIVER YOUTH FOREST CAMP		
Care and Custody	5,825	Federal and Private Revenue
Care and Custody	2,382	Federal and Private Revenue
Care and Custody	6,399	Federal and Private Revenue
CENTRAL OFFICE		
Mental Health and	105,009	Federal and Private

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Agency and Program	Amount	Fund
Residential Services		Revenue
Management Services	3,170	Federal and Private Revenue
Corrections Division	4,815	Federal and Private Revenue
WARM SPRINGS		
Treatment Services	138,047	Federal and Private Revenue
CENTER FOR THE AGED		
Residential Services	2,605	Federal and Private Revenue
Residential Services	4,125	Revolving
EASTMONT HUMAN SERVICES CENTER		
Care and Custody	10,419	Federal and Private Revenue
PINE HILLS SCHOOL		
Care and Custody	45,200	Federal and Private Revenue
MONTANA VETERANS' HOME		
Care and Custody	6,599	Federal and Private Revenue
GOVERNOR'S OFFICE		
Executive Office	700,000	Federal and Private Revenue
LONG-RANGE BUILDING		
	76,000	Revolving
	10,738	Bond Proceeds and Insurance Clearance
	17,500	Federal and Private Revenue
	5,300	Federal and Private Revenue
SCHOOL FOR THE DEAF AND BLIND		
Deaf and Blind Program	7,000	Federal and Private Revenue
BOARD OF PUBLIC EDUCATION		
Fire Services	2,000	Federal and Private Revenue
PUBLIC SERVICE COMMISSION		
Public Service Regulation	182,700	Federal and Private Revenue

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DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Agency and Program	Amount	Fund
Board of Athletics	2,500	Earmarked Revenue

Section 2. **Limitations on expenditures.** The conditions set forth in sections 1 through 16 of House Bill 483 passed by the 46th legislature apply to appropriations under this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 24, 1981.

HOUSE BILL NO. 810

AN ACT AUTHORIZING THE GOVERNOR TO ENTER INTO AN AGREEMENT WITH OTHER AFFECTED STATES TO PRESERVE RAIL SERVICES FROM JONATHAN, MINNESOTA, TO MILES CITY, MONTANA; PROVIDING AN APPROPRIATION FOR THIS PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rail services — authorization.** The governor of Montana may participate with the governors of other affected states in devising an agreement for the continuation of rail services from Jonathan, Minnesota, to Miles City, Montana. The governor may enter such an agreement on behalf of the state of Montana if each of the other participating states fully funds its share of the agreement and Montana's total liability under the agreement is limited to an amount not to exceed $258,000. The governor may not pledge the full faith and credit of the state of Montana for the repayment of any loan made by the federal railroad administration in furtherance of the agreement.

Section 2. **Appropriation.** There is appropriated $258,000 from the general fund to the office of the governor for the biennium ending June 30, 1983, for the purpose of implementing section 1. The money may not be spent until each of the other participating states fully funds its share of the agreement. If the money is not spent, it shall revert to the general fund.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 18, 1981.

HOUSE BILL NO. 827

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR THE PURPOSE OF TELECOMMUNICATIONS PLANNING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the general fund to the department of administration for the purpose of telecommunications planning:

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Fiscal year ending June 30, 1982	$45,000
Fiscal year ending June 30, 1983	$45,000

These funds shall not be used in the planning of public television or public radio. Advice from private vendors is to be utilized in the planning effort to the maximum extent possible, but such advice is not to be construed as binding upon either the department or the state.

Section 2. **Additional appropriation if certain matching money received.** Contingent upon receiving a dollar for dollar matching ratio from executive branch agencies, local government or any other source, the following additional money is appropriated from the general fund to the department of administration for the purposes of telecommunications planning and/or equipment purchases as follows:

Fiscal year ending June 30, 1982	$42,191
Fiscal year ending June 30, 1983	$53,269

Approved April 22, 1981.

HOUSE BILL NO. 828

AN ACT TO APPROPRIATE FUNDS TO THE GOVERNOR'S OFFICE FOR THE PURPOSE OF ADVOCATING THE STATE'S OPPOSITION TO FEDERAL LEGISLATION THAT WOULD PROHIBIT OR DIMINISH THE STATE'S RIGHT TO LEVY A 30 PERCENT TAX ON COAL MINED WITHIN MONTANA'S BORDERS; CREATING A LEGISLATIVE OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $500,000 from the general fund to the governor's office until June 30, 1983, for the purpose of advocating the state's opposition to federal legislation that would prohibit or diminish the state's right to levy a 30% tax on coal mined within Montana's borders.

Section 2. **Legislative oversight committee.** There is created a legislative oversight committee of four legislators, one each selected by the majority leader of the Senate, the majority leader of the House, the minority leader of the Senate, and the minority leader of the House, to oversee the use of the money appropriated under this act. The governor shall seek the advice of the legislative oversight committee before all major commitments of funds from this appropriation before the hiring of any consultant or lobbyist and before setting any policy regarding the direction of any policy for the protection of coal severance tax. The final decision shall, however, remain with the governor. The members of the legislative oversight committee are entitled to compensation and expenses in the same

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manner as members of other interim legislative committees from this appropriation.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

HOUSE BILL NO. 832

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF COMMERCE FOR THE PURPOSE OF PLANNING AND CONDUCTING SMALL BUSINESS CONFERENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the general fund to the department of [commerce] for the purpose of planning and conducting small business conferences:

Fiscal year ending June 30, 1982	$5,000
Fiscal year ending June 30, 1983	$5,000

Approved April 21, 1981.

HOUSE BILL NO. 833

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF INSTITUTIONS FOR CONSTRUCTION OF SECURITY IMPROVEMENTS AT MONTANA STATE PRISON AT DEER LODGE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $158,500 from the general fund to the department of institutions for the fiscal year ending June 30, 1981, for materials for and construction of security improvements at Montana state prison at Deer Lodge.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1981.

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HOUSE BILL NO. 837

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR CONSTRUCTION OF A GUARD TOWER AT MONTANA STATE PRISON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $255,000 from the long-range building bond proceeds and insurance clearance account to the director of the department of administration for the biennium ending June 30, 1983, for construction of a guard tower at the Montana state prison at Deer Lodge.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 21, 1981.

HOUSE BILL NO. 841

AN ACT TO APPROPRIATE MONEY FOR THE UPGRADING OF NEUTRON ACTIVATION AND GAMMA RADIATION DETECTION AND ANALYSIS EQUIPMENT BY THE MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $75,000 from the long-range building program account (BPICA) and $36,830 from the federal and private revenue account to the Montana college of mineral science and technology for the biennium ending June 30, 1983, for the upgrading of neutron activation and gamma radiation detection and analysis equipment.

Approved April 29, 1981.

HOUSE BILL NO. 846

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE REHABILITATION OF THE TONGUE RIVER DAM AND TO APPROVE THE ISSUANCE OF STATE OF MONTANA COAL SEVERANCE TAX BONDS FOR A STATE-FEDERAL COST SHARE OF THE TONGUE RIVER DAM REHABILITATION CONSTRUCTION COSTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Tongue River Dam, because of an undersized spillway, is in a dangerously unsafe condition; a flood, which is expected to occur once every 68 years, is capable of washing out the present dam; and the

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dam almost failed during a flood that occurred in the spring of 1978 and would have failed during a flood that occurred in 1923 had the dam been in place at that time; and

WHEREAS, dam failure would result in devastating property damage downstream along the Tongue River and to the communities of Birney and Ashland and might cause loss of life; and

WHEREAS, an enlarged Tongue River reservoir that is federally funded and jointly managed by the Northern Cheyenne Tribe, the Department of Natural Resources and Conservation, and the federal government can provide a cost-effective means of preserving all existing project benefits, provide water for future agricultural and tribal use, provide for the preservation of the recreational and fishery values, and provide sufficient water to facilitate the negotiation of a compact between the Northern Cheyenne Tribe and the Reserved Water Rights Compact Commission regarding tribal rights to water from the Tongue River; and

WHEREAS, a state cost share is essential in expeditiously securing the federal funds necessary to construct a joint tribal-federal-state project.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation for rehabilitation of the Tongue River Dam.** (1) There is appropriated to the department of natural resources and conservation for pursuing the option to rehabilitate the Tongue River Dam as recommended in the department of natural resources and conservation's report to the legislature, "Tongue River Dam Project Summary Report":

(a) from the net earnings available for appropriation in the renewable resource development bond account, provided for in 90-2-102(4), the sum of $40,732 for the period beginning on the effective date of this act and ending June 30, 1981; and

(b) from the water development earmarked account, created by section 5, Senate Bill 409, out of funds available under section 5(3)(b), Senate Bill 409, the sum of $395,331 for the biennium ending June 30, 1983.

(2) The department shall:

(a) maintain the reservoir at the lowest level possible to meet existing water contracts until safety and other problems with the dam are rectified;

(b) develop, implement, and maintain an emergency warning and downstream evacuation system for residents living below the Tongue River Dam;

(c) work with the Northern Cheyenne Tribe and the federal government to develop a jointly managed and funded project on the Tongue River that provides for a larger reservoir behind a safe dam; and

(d) cooperate with the reserved water rights compact commission, established in 2-15-212, to reach a negotiated- settlement of the tribe's water right in conjunction with a joint tribal-state rehabilitation of Tongue River Dam.

Section 2. **Authorization of state of Montana coal severance tax bonds for Tongue River Dam rehabilitation.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, Section 5 of the Montana Constitution, appropriates from

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the severance tax bond subfund all money necessary for the payment of any principal and interest not provided for in subsection (2) of this section. The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, incorporates by reference sections 24 through 42 of Senate Bill 409 as part of the appropriation authorized by this section.

(2) The legislature, through the enactment of this section by a two-thirds vote of the members of each house of the legislature, authorizes the creation of a state debt in an amount not to exceed $10 million for the issuance of state of Montana coal severance tax bonds authorized by this section.

(3) The board of examiners is hereby authorized to issue up to $10 million worth of state of Montana coal severance tax bonds pursuant to sections 24 through 42 of Senate Bill 409 for the state of Montana's share of the construction costs of the Tongue River Dam rehabilitation as established in a joint sharing of project costs between the state, the federal government, and the Northern Cheyenne Tribe. This authorization is contingent upon legislative approval of a detailed project plan approved by the board of natural resources and conservation that includes a resolution of Northern Cheyenne water right conflicts in the Tongue River Basin and upon the appropriation of federal funds to construct the project approved by the board of natural resources and conservation and legislature.

(4) The state of Montana's share of any revenues from the rehabilitated Tongue River Dam is pledged first for the state of Montana's share of the operation and maintenance costs of the rehabilitated Tongue River Dam. The excess, if any, of revenues over the operation and maintenance costs is pledged and allocated to a special bond account, which shall be part of the sinking fund of the state treasury fund structure, for the benefit of the bonds approved by this section. The excess, if any, of revenues over debt service and operation and maintenance costs is allocated to the water development earmarked account.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

HOUSE BILL NO. 847

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REPAIR THE BOAT RAMP AT HELL CREEK STATE RECREATION AREA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $4,745 from the renewable resource BPICA account to the department of fish, wildlife, and parks for the fiscal year ending June 30, 1981, to fund repairs on the boat ramp at Hell Creek state recreation area.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

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HOUSE BILL NO. 854

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF COMMERCE TO PLAN FOR AND COORDINATE TRANSPORTATION NEEDS AND SERVICES FOR ALL MODES OF TRANSPORTATION AND TO PURSUE RATE ANALYSIS AND LITIGATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated $324,626 from the general fund to the department of commerce as follows:

Fiscal year 1982	$102,313
Fiscal year 1983	$222,313

(2) The money is to be used by the department to plan for and coordinate transportation needs and services for all modes of transportation and to pursue rate analysis and litigation.

Approved April 23, 1981.

HOUSE BILL NO. 861

AN ACT TO PROVIDE FOR ANALYSIS OF THE FEASIBILITY OF GENERATING HYDROELECTRIC POWER AT OFF-STREAM SITES IN THE YELLOWSTONE RIVER BASIN; AND APPROPRIATING FUNDS FOR SUCH PURPOSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purposes of this act are to:

(1) demonstrate that the drainage system of the Yellowstone River can develop substantial supplies of clean hydroelectric power without disrupting the agricultural and other values associated with a free-flowing main stem of the river;

(2) demonstrate that off-stream hydroelectric capacity could be investigated within the framework of existing environmental protection statutes and could be implemented within the framework of and to the benefit of existing water rights and reservations; and

(3) direct consideration of, but not to decide at this time, how electricity so generated could be marketed.

Section 2. **Duties of department.** The department of natural resources and conservation shall, prior to January 1, 1983:

(1) formulate an overall project concept of one or more demonstrations involving the diversion, storage, and gravity-flow routing of annual peak period streamflows within the Yellowstone River Basin, with such routings

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culminating in hydroelectric installations and return of the waters to the streams;

(2) conduct preliminary environmental reviews of one or more sites for potential demonstration projects, to serve as baseline material for full-scale environmental impact analysis of such demonstration projects as may be selected for further funding or construction by future sessions of the legislature;

(3) conduct preliminary economic reviews of one or more such sites, evaluating alternate routes, capacities, and facilities with cost estimates suitable for formulating final design and construction budgets and analyzing cost-benefit ratios;

(4) analyze any licensing requirements that may be imposed by federal law; and

(5) consider, without recommendation and after consultation with public utilities and cooperatives that distribute electricity within the basin, various means by which hydroelectric power generated at such demonstration projects could be sold.

Section 3. **Administration of act.** The department may not increase its number of full-time equivalent employees for the purpose of carrying out this act unless the governor finds that adequate contracted services from the private sector are unavailable within the amounts appropriated by this act. The department is authorized to contract for such professional services as are needed to carry out this act.

Section 4. **Appropriation.** There is appropriated from the interest income of the resource indemnity trust fund or from the renewable resource development clearance fund account, or both, to the department of natural resources and conservation the sum of $350,000 for the purpose of implementing sections 1 through 3.

Approved April 29, 1981.

HOUSE BILL NO. 863

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSTITUTIONS FOR SETTLEMENT OF CERTAIN CLAIMS MADE AGAINST THE STATE OF MONTANA BY GERALDINE STRONG; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $11,500 from the general fund to the department of institutions to satisfy the claim of Geraldine Strong against the department of institutions, which claim is based upon charges of sex discrimination arising from a 1974 employment dispute and is the subject of legal action in the case of Strong v. State of Montana (Civil No. CV-78-98-H; D. Mont.).

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Section 2. **Conditions.** This appropriation is subject to the condition that the claimant execute a full release of all claims against the department of institutions, its officers and employees, and the state of Montana for damages arising from the alleged discrimination which is the subject of the claim.

Section 3. **Appropriation nonjudgmental.** By appropriating the above sums, the legislature is not passing on the merits of this claim.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1981.

HOUSE BILL NO. 864

AN ACT TO APPROPRIATE $10,000 TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE PURPOSE OF FUNDING A STUDY AT SACO, MONTANA, TO DEVELOP A BIOLOGICAL METHOD OF MOSQUITO CONTROL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $10,000 from the general fund to the department of health and environmental sciences for the biennium ending June 30, 1983, for the purpose of conducting a study at Saco, Montana, to develop a biological method of mosquito control, in cooperation with Phillips County and the cooperative extension service.

Approved April 23, 1981.

HOUSE BILL NO. 865

AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1981; PERMITTING CERTAIN APPROPRIATIONS TO THE DEPARTMENT OF REVENUE TO CONTINUE TO THE NEXT BIENNIUM; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** (1) Except as provided in subsection (2), the appropriations contained in this act are intended to provide for only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any such appropriation shall revert to the fund from which it was appropriated.

(2) The appropriation to the department of revenue by this act ($150,000) and the appropriation to the department of revenue by house

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bill 94 for property valuation purposes, Phase I ($110,000) may continue for the biennium ending June 30, 1983. These appropriations may be spent for the stated purposes only.

Section 2. **Governor's power to reduce appropriations.** The governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Total not appropriation.** The total shown in this act is for informational purposes only and is not an appropriation.

Section 4. **Appropriations.** Subject to the terms and conditions of this act, the following money is appropriated for the fiscal year ending June 30, 1981:

	General Fund
DEPARTMENT OF LIVESTOCK	
Rabies and Rodent Control	$ 22,354
DEPARTMENT OF REVENUE	
Property Valuation	150,000
DEPARTMENT OF JUSTICE	
Transportation of Prisoners	45,000
MONTANA HISTORICAL SOCIETY	
Administration	22,351
DEPARTMENT OF PUBLIC SERVICE REGULATION	
Public Service Commission	20,000
Total	$ 259,705

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1981.

HOUSE BILL NO. 868

AN ACT TO APPROPRIATE MONEY FROM THE GENERAL FUND TO THE HIGHWAY RECONSTRUCTION TRUST ACCOUNT AND TO THE HIGHWAY EARMARKED ACCOUNT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Biennial appropriation.** There is appropriated from that portion of the general fund received from the interest on the coal tax constitutional trust fund to the credit of the highway reconstruction trust account the following funds:

Fiscal Year 1982	-	$2,000,000
Fiscal Year 1983	-	$2,000,000

Section 2. **Expenditure of appropriated funds.** (1) The funds appropriated to the highway reconstruction trust fund account shall be

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expended by the department of highways for the reconstruction of highways on the primary and secondary systems.

(2) The department of highways shall expend these funds on reconstruction projects to straighten, widen, or make major improvements to the base of the highway or make major improvements in grades or curves. The funds may not be expended for routine repairs.

(3) The department of highways shall expend the funds on projects throughout the state according to need and not on the basis of 60-3-203.

Section 3. **General operations.** There is appropriated to the highway earmarked account for the biennium ending June 30, 1983, $17,150,000 from that portion of the general fund received from the oil severance tax and the interest on the coal tax constitutional trust fund. In the event the appropriation under [HB 869] of $2,850,000 is not effective by the end of the federal fiscal year 1982, the sum of $17,150,000 in the preceding sentence shall be increased by the amount of the appropriation in [HB 869] not used.

Approved May 1, 1981.

HOUSE BILL NO. 871

AN ACT TO APPROPRIATE MONEY FOR COAL TAX PARK ACQUISITIONS AND FOR CULTURAL AND AESTHETIC PROJECTS; AND PROVIDING EFFECTIVE DATES.

WHEREAS, 15-35-108(2)(h), MCA, provides that 2 ½% of the coal severance tax is to be credited to a trust for park acquisition, protection of works of art in the State Capitol, and other cultural and aesthetic projects, the balance of earnings and earnings projected for the 1983 biennium are appropriated by this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation for park acquisition.** There is appropriated $750,000 to the department of fish, wildlife, and parks from the coal tax park acquisition account in the earmarked revenue fund. These funds are appropriated for the parks listed below:

(1)	Engle River Bottom Site	$340,000
(2)	Doeden Island Property	$110,000
(3)	Spring Meadow	$300,000

Section 2. **Appraisal on park sites.** The department of fish, wildlife, and parks shall pay the appraised value or the amount appropriated in section 1, whichever is less, for the acquisition of each park site project. Each appraisal shall be reviewed by a qualified review appraiser.

Section 3. **Appropriation for cultural and aesthetic projects.** There is appropriated $641,680 to the Montana historical society from the

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coal tax cultural and aesthetic account in the earmarked revenue fund. It is the intent of the legislature that the following projects be funded not to exceed the amounts listed in this section:

(1) Art Conservation, University of Montana School of Fine Arts	$ 37,500
(2) Conservation of Capitol Murals, Montana Historical Society	108,489
(3) Conservation of Ralston Mural, Billings Airport	15,000
(4) Expansion Planning, Museum of the Rockies	110,000
(5) Facility Renovation, Custer County Art Center	8,960
(6) J. K. Ralston Center, Richland County	40,000
(7) Living History Program, Western Heritage Center	60,000
(8) Montana Chautauqua, University of Montana	4,262
(9) Montana Folklife Project, Montana Arts Council	51,849
(10) Montana Genesis, Stevensville	20,000
(11) Montana Literature Publication, University of Montana	7,620
(12) Montana Repertory Theater, University of Montana	21,600
(13) Montanans at Work, Montana Historical Society	90,000
(14) Pealow Carved Ivory Collections, Montana College of Mineral Science and Technology	1,400
(15) Restoration of Old Prison Theater, Deer Lodge	40,000
(16) Renovation of Custer County Art Center	25,000

Section 4. **Rulemaking authority.** The Montana historical society and the department of fish, wildlife, and parks shall adopt rules for the administration of the cultural and aesthetic project grants and coal tax park acquisitions for which money is appropriated under this act. Administrative rules may provide for adjustment of grants if less revenue is received than is appropriated in sections 1 and 3.

Section 5. **Separate accounts.** Separate accounts shall be maintained for cultural and aesthetic project grants and for park acquisition.

Section 6. **Effective dates.** This act is effective July 1, 1981, except that section 4 is effective on passage and approval.

Approved May 1, 1981.

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HOUSE BILL NO. 873

AN ACT APPROPRIATING MONEY TO THE CITY-COUNTY OF ANACONDA-DEER LODGE TO MITIGATE EFFECTS OF PLANT CLOSURES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the city-county of Anaconda-Deer Lodge to mitigate effects upon local government of plant closures $160,844 for the fiscal year ending June 30, 1981, and the biennium ending June 30, 1983, for the following purposes:

(1) $90,750 for law enforcement;

(2) $26,821 for the head start program to operate school services and food programs;

(3) $17,500 for staff for alcohol and drug service programs;

(4) $5,773 for county matching funds for mental health services;

(5) $20,000 for aid for moving expenses for displaced families.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 1, 1981.

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RESOLUTIONS

ENACTED BY THE

Forty-seventh Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1981

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RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

JOINT RULES
CHAPTER 1
Presiding Officer - Decorum,
Order and Debate

1-1. The presiding officer of the Senate is the president and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the

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member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides.

1-9. (1) A communication or paper shall be addressed to the presiding officer and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is a member of the house over which he is presiding he shall vote as any other member and may not vote a second time.

CHAPTER 2
Meetings, Quorums, and Attendance

2-1. The hour of meeting of the Senate and House of Representatives may be as ordered by the Senate or House.

2-2. Lobbying on the floor of the Senate or House of Representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the Committee of the Whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the House or Senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

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2-8. If a quorum is present, five members of the Senate may order a call of the Senate, and fifteen members of the House of Representatives may order a call of the House.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3
Legislative Employees

3-1. The legislature shall prescribe the compensation of the employees of each house by joint resolution. Each house shall prescribe the duties of its officers and employees, and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. The Legislative Council shall be responsible for maintaining personnel files.

3-3. The committee on legislative administration of each house shall appoint secretaries for a standing or special committee on recommendation of the committee chairman, subject to the approval of the respective houses. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The Legislative Council shall hire all engrossing and enrolling typists and proofreaders who are under the direction of the bills committee.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are to:

(a) have custody of all records, bills, documents, and other papers;

(b) supervise the making and examination of the journal and the handling of bills and resolutions;

(c) deliver to the secretary of state at the close of each session the journal, bill books and resolution books, and all copies of introduced bills and joint resolutions;

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(d) collect from the chairman or secretaries of all standing committees, special committees, and conference committees, the minutes of such committees and deliver them to the state historical society. (See Rule 7-4)

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the Senate or the chief clerk of the House, subject to the general supervision of the presiding officer.

3-7. The duties of the engrossing and enrolling clerks are:

(a) to engross or enroll all bills delivered to them within forty-eight hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated;

(b) to correct clerical errors, with the consent of the secretary of the Senate or chief clerk of the House of Representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the Montana Code Annotated.

The secretary of the Senate or chief clerk of the House shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are to:

(a) maintain order under the direction of the presiding officer;

(b) execute commands and serve all processes;

(c) receive, distribute and have custody of supplies.

3-9. The assistant sergeant-at-arms, doorkeepers, watchmen, janitors, pages and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duties of the chaplain of each house are to open each day's session with a prayer.

3-11. A legislative aide is a person who has registered with the clerk of the House or secretary of the Senate and has been issued a distinctive

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identification form such as a name tag. Such identification may be issued only upon receiving written verification from a member that the person involved is serving him as an aide. A person may not represent himself to be a legislative aide unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule. Legislative aides must be of legal age unless otherwise approved by the presiding officer.

No member may designate more than one aide without the approval of the Rules Committee of the house involved.

Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

3-12. An employee, legislative aide, or legislative intern of either house is prohibited from lobbying as defined in Section 5-7-102(1), MCA. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. The offices of the Legislative Council shall serve both the Senate and House of Representatives as required.

The Council staff shall prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report and distribute the report to legislative leaders in each house and to members of the Senate Committee on Finance and Claims and House Committee on Appropriations.

3-15. Contracts for purchase or lease of equipment and supplies made during the legislative session shall be made on the approval of the committee on legislative administration of each house, subject to the review of the presiding officer of the respective house. Purchase orders shall be issued by Legislative Council staff and accounting records kept in that office.

CHAPTER 4
Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

(6) Motions

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(7) First reading and commitment of bills

(8) Second reading of bills (Committee of the Whole)

(9) Third reading of bills and consent calendar bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house involved shall revert to Order of Business No. 1 when reconvening after a recess.

CHAPTER 5
Motions

5-1. When a motion is made it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions which have precedence in the order listed:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) question of privilege

(5) to lay on the table

(6) for the previous question

(7) to postpone to a certain day

(8) to refer or commit

(9) to amend

(10) to postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after

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such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the fifty-fourth day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under Order of Business No. 6, and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered, unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) for parliamentary inquiry

(5) for suspension of the rules

(6) to lay on the table

(7) for the previous question

(8) to limit, extend the limits of, or to close debate

(9) to amend an undebatable motion

(10) to divide a question

(11) to pass business in Committee of the Whole

(12) to take from the table

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

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5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6

Bills and Resolutions

A. Form of Bills — Definition of Resolutions — General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used only to adopt or amend the rules of one house or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for Legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; and

(j) direct changes to, repeal, or direct adoption of a rule in the Montana Administrative Code. Except as otherwise provided in these rules or

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the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

6-2. All bill drafting requests shall require a legislative sponsor. Bills shall be typewritten on paper eight and one-half by eleven inches with twenty-five numbered lines, and shall be introduced in quadruplicate. Bills shall be numbered at the foot of each page (except page one) and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the Montana Code Annotated repealed or amended in a bill shall be stated in the title except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

6-3. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive, and judicial branches of state government, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11(4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the House Committee on Appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage (Sections 1-2-201 and 1-2-202, MCA).

B. Introduction

6-6. (1) A legislator may not request more than five bills from the Legislative Council nor may a legislator introduce more than five bills. This limit does not apply to:

(a) bills requested prior to the convening date of each session;

(b) interim committee bills;

(c) state agency bills;

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(d) code commissioner bills;

(e) resolutions;

(f) standing committee bills;

(g) appropriation bills; or

(h) revenue bills.

(2) Bills and joint resolutions will be checked by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. Bills will be entered on the automated bill drafting equipment, typed, and delivered in quadruplicate to the requesting legislator. A stamp shall be affixed to the original bill cover and signed to indicate Council review. If such stamp is not affixed, the bill may not be introduced.

(3) During a session a bill may be introduced by endorsing it with the name of a member and presenting it to the chief clerk or secretary in quadruplicate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill shall be introduced in the house in which the legislator whose name appears first on the bill is a member. The chief joint sponsor's name shall appear immediately to the right of the first sponsor's name. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of the ..... (Name of Agency or Committee)".

(5) Bills may be prefiled, numbered, and preprinted prior to a legislative session by the staff of the Legislative Council. Actual signatures may appear on the face of the prefiled bill or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name typed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All prefiled bills will be made available to the public.

(6) Before introduction a joint resolution described in Joint Rule 6-1(2)(a) must be approved by the joint rules committee and each simple resolution must be approved by the rules committee of the house introducing it. A stamp indicating such approval shall be affixed to the cover of the resolution before presentation to the chief clerk of the House or secretary of the Senate.

6-7. The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions.

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	Request Deadline 5:00 P.M. Legislative Day	Introduction Deadline 5:00 P.M. Legislative Day
General Bills and Resolutions	10	14 (or 2 legislative days after delivery if delivery is after 14th day)
Revenue Bills	17	21
Committee Bills and Resolutions	36	40
Committee Revenue Bills	62	66
Appropriation Bills	No deadline	No deadline
Interim Study Resolutions	No deadline	No deadline
Joint Resolutions Concerning Administrative Rules	No deadline	No deadline

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill.

C. First Reading and Referral

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6.

Upon introduction or reception of a bill, the chief clerk of the House or the secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be rereferred at any time before its passage.

D. Amendments and Substitute Bills

6-14. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new

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matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed.

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated.

6-19. If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, not less than six hundred copies of the bill shall be printed on yellow paper with all amendments incorporated into the printed copies. If the bill has been returned from a committee without amendments, only the first sheet shall be printed on yellow paper, and the remainder of the text incorporated by reference to the preceding printed version of the entire bill. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

E. Engrossing and Enrolling

6-20. When a bill has been reported favorably by Committee of the Whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the Whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without retyping, and only the first sheet shall be printed on blue paper with the remainder of the text incorporated by reference to the preceding printed version of the entire bill.

If a bill is amended by the standing committee or Committee of the Whole in the second house, the amendments will be included in a reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

6-21. When a bill has passed both houses it shall be enrolled under the direction of the bills committee of the house of origin. An original and two duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side, with twenty-five unnumbered lines to the page. In sections

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amending existing statutes new matter shall be underlined, and matter stricken with a line through it shall be omitted. The typewriting shall be done with a black record ribbon, pica type, on paper eight and one-half inches wide and eleven inches long. The original and two copies of the bill shall be red lined. The history of the bill shall also be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. A copy of the history shall be filed with the law library.

When the enrolling has been completed, the bill shall be examined by the sponsor and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day in which event it shall be signed that day. The fact of signing shall be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

A bill that has passed both houses of the legislature by the ninetieth day may be enrolled; clerically corrected by the presiding officers, if necessary; signed by the presiding officers; and delivered to the governor not later than 5 days after the ninetieth legislative day. All journal entries authorized under this rule will be entered on the journal for the ninetieth day.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 5-11-204, shall be filed with the clerk of the supreme court and the Legislative Council.

F. Second Reading — Committee of the Whole

6-22. All bills, except consent calendar bills, which have been reported by a committee, accepted by the house concerned and printed, shall be posted on the calendar for consideration by Committee of the Whole. The secretary of the Senate or chief clerk of the House shall record the time each bill is received and the time the bill is placed on members' desks. Until the fiftieth legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by Committee of the Whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or Committee of the Whole of the house concerned.

6-23. Every bill considered in Committee of the Whole shall be read by a summary of its title and considered section by section.

All Committee of the Whole amendments shall be prepared and delivered to the clerk for reading before the amendment is voted on. The

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amendment form will include the date and time of the amendment. Each rejected proposed amendment shall be identified and kept in the office of the chief clerk of the House or secretary of the Senate. Upon adjournment, the text of such amendments shall be delivered to the state archives.

6-24. Prior to adoption of a Committee of the Whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a Committee of the Whole report on a bill is rejected the bill shall remain on second reading.

6-26. Either house may resolve itself into a Committee of the Whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a Committee of the Whole, except as follows:

(1) The only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into Committee of the Whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a Committee of the Whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G. Third Reading — Consent Calendar — Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present and voting in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

Any vote in one house on a bill proposing an amendment to the Montana State Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the legislature will cause the bill to progress as though it had received the majority vote.

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6-29. Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in Committee of the Whole; and the third, which shall be by complete title, prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within twenty-five days if the legislature is adjourned, it shall become a law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye" the veto is overridden. If two-thirds of the members present do not vote "aye" the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

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(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

H. Transmittal of Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the House of Representatives to the Senate, the secretary of the Senate shall give a dated receipt for the bill to the chief clerk of the House. When a Senate bill is transmitted to the House of Representatives, the chief clerk of the House shall give a dated receipt to the secretary of the Senate.

6-34. No bills, except for appropriation bills, revenue bills and amendments considered by joint committee need to be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the forty-fifth legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting shall determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the seventieth legislative day thereof.

A revenue bill is one which would either increase or decrease tax collections.

Appropriation and revenue bills shall be transmitted from the original house on or before the seventieth day unless two-thirds of the members present and voting in the receiving house shall determine that the bill may be transmitted after the seventieth day.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall as soon as possible transmit it to the other house with notice of its action.

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

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The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Title 5, chapter 4, part 2, MCA).

CHAPTER 7
Committees

7-1. The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and expenses, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the Legislative Council staff.

7-2. A standing committee shall submit a written report in triplicate on all bills or matters referred to it within seven days after reference, unless at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees and subcommittees shall keep minutes of their meetings and, at the close of the session, shall make an original and two complete copies and shall turn the original of the minutes over to the chief clerk of the House or secretary of the Senate for delivery to the historical society. The Legislative Council and the law library shall each be given one copy of the minutes.

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7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House Committee on Appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. The time and place of all conference committee meetings shall be agreed upon by their chairman and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. Conference committee reports must give clerical instructions for enrolling by referring to the reference bill version.

When a conference committee report is filed with the secretary or clerk the same shall be read under Order of Business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day.

7-11. Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from

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taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

7-12. A committee block scheduling system will be implemented in the Senate and House of Representatives. The schedule will be coordinated between houses and will be adjusted according to the legislature's work load.

CHAPTER 8
Rules and Journal

8-1. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) the number of each bill when it is introduced and subsequently considered; the title of each bill shall be printed in the index of the permanent journals.

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 5-2-214, MCA).

8-3. The bills and journal committee of each house shall supply the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the Senate must be authenticated by the signature of the president, and the journal of the House of Representatives by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Council (Sec. 5-11-201 through 5-11-203, MCA).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule

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or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the Senate and House of Representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives and the joint rules of the Senate and House of Representatives. Upon adoption, the secretary of the Senate and the chief clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, House or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and House of Representatives.

8-8. Pursuant to the authority established in Sections 5-11-211 through 5-11-214, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $250; an additional $150 is required for mailing.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions, amendments, status sheets, or other documents may be purchased according to the length of the document as follows:

1-5 pages	$ .25
6-15 pages	$ .50
16-40 pages	$1.00
41-100 pages	$1.50
101-200 pages	$2.00
Over 200 pages	$4.00
Copies of enacted bills	cost of reproduction.

CHAPTER 9
Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

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9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members, if the request occurs before the vote is taken.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or House) bill number ..... having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used, the bell shall be rung after the question is stated and then the presiding officer shall state "Those in favor vote yes and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is excused when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the Senate or chief clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in Committee of the Whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. Roll call votes shall be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole referred to in Joint Rule 6-26(1)(a) through (d). A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

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CHAPTER 10
Consent Calendar

10-1. Noncontroversial bills and simple and joint resolutions qualifying for the consent calendar may be processed by a standing committee according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. No appropriation or revenue bills may be recommended for the consent calendar.

(2) The legislation is then sent to printing to be prepared as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation shall be immediately posted (as soon as it is received from printing) on the consent calendar and must remain there for one legislative day before consideration under Order of Business No. 11, Special Orders of the Day. At that time, the presiding officer will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(4) Any three members may submit written objections and the legislation must then be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be voted on following third reading.

(6) Legislation on the consent calendar will be voted on individually with the roll call vote printed in the journal as the final vote on those bills and resolutions.

(7) Legislation passed on the consent calendar will then be transmitted to the second house.

CHAPTER 11
Statement of Legislative Intent

11-1. Definition. For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill will express the common understanding of those components of the legislature voting on the bill. This statement differs from a purpose clause which is used in general to describe the broad overall objectives of a bill while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

11-2. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, committee of the whole or conference committee) agrees by a two-thirds vote to attach the statement.

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11-3. Statement of intent to accompany bill — when — how. A statement shall accompany a bill as follows:

(1) Statements of intent are required for bills delegating rulemaking or licensing authority. The statement shall be entered on ALTER, printed on paper of the same color and in the same manner as the bill, and shall be attached to the bill. The statement shall be printed on paper of the same color as the bill and attached to the bill on all subsequent printings of the bill.

(2) The standing committee of the house in which the bill originates is responsible for authoring a statement of intent for a bill requiring one.

11-4. Modification. Any committee subsequently considering the bill may amend a previous statement. The statement of intent will be reflected in the history of the bill.

11-5. Conference committee on intent only. When the second house concurs in a bill without amendments but supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

A new statement of intent written by the second house will be processed in the same manner as a second house amendment.

A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Approved January 23, 1981.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE MONTANA CRIMINAL JUSTICE SYSTEM, INCLUDING ALTERNATIVE WAYS AND EFFECTS OF REDISTRICTING MONTANA'S DISTRICT COURT SYSTEM, ESTABLISHING A STATEWIDE DISTRICT ATTORNEY SYSTEM FOR CRIMINAL PROSECUTIONS, AND PROVIDING FOR A STATEWIDE SYSTEM OF REPRESENTATION FOR INDIGENTS ACCUSED OF CRIMES; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, it is apparent that the equitable administration of criminal justice throughout the State of Montana is at times thwarted because of the tremendous caseload of certain District Courts; and

WHEREAS, the civil caseload of certain District Courts is so large that unreasonable delays in the resolution of conflicts often occur; and

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WHEREAS, the current County Attorney system for criminal prosecutions results in inconsistencies in the administration of criminal justice in the State of Montana; and

WHEREAS, the increasing sophistication of criminal activity in the State of Montana can only be counteracted by highly trained, professional prosecutors; and

WHEREAS, the constitutional requirement of the effective assistance of counsel for persons accused of crimes has not been achieved consistently on a statewide basis; and

WHEREAS, the cost of defense in a major felony prosecution can create a tremendous burden on an individual county.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in accordance with section 5-5-217, MCA, the Legislative Council is requested to assign a joint subcommittee to study:

(1) the need for restructuring Montana's judicial districts taking into account civil and criminal caseload as well as geographical considerations;

(2) alternative plans for redistricting the present judicial district;

(3) the effects of redistricting judicial districts on the administration of justice and the costs and benefits;

(4) the need for establishing a District Attorney system for criminal prosecutions;

(5) alternative plans for establishing District Attorney districts and their relationship to Montana's judicial districts;

(6) the effects of establishing a District Attorney system on the administration of criminal justice and the costs involved;

(7) the need for a statewide system of publicly funded defense services for indigents accused of crimes;

(8) the alternative plans for the public defender system; and

(9) the effects of providing defense services under a statewide system and the cost ramifications of the system.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 16, 1981.

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SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE USE OF GRANTS AND CONTRACTED SERVICES BY STATE GOVERNMENT IN NATURAL RESOURCE AND ENVIRONMENTAL SCIENCE AREAS.

WHEREAS, many funds expended by state departments, agencies, boards, and other entities of state government are funds made available through various grants; and

WHEREAS, funds received from grants as well as other state funds are expended for contracted services as well as in other ways; and

WHEREAS, the availability and expenditure of these funds have direct and indirect impact on the total expenditures of funds in the state; and

WHEREAS, the Legislature finds that there is currently no acceptable method to properly assess the true role of grants and contracted services in the many programs funded by the Legislature; and

WHEREAS, the Legislature is, in particular, interested in the use of grants and contracted services of the renewable and nonrenewable natural resource and environmental science programs of the following agencies:

(1) department of fish, wildlife, and parks;

(2) department of natural resources and conservation;

(3) coal board; and

(4) environmental sciences division of the department of health and environmental sciences.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Finance Committee is requested to study the use of grants and contracted services of the following state agencies:

(a) department of fish, wildlife, and parks;

(b) department of natural resources and conservation;

(c) coal board; and

(d) environmental sciences division of the department of health and environmental sciences.

(2) That the committee include in its study a consideration of at least the following:

(a) source of funds for grants and contracted services;

(b) statutory or other conditions attached to the use of those funds;

(c) manner of distributing the funds, if other than as prescribed;

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(d) method and degree of monitoring and reporting;

(e) utilization by and benefit to the state of the results; and

(f) alternative methods of accomplishing the purpose of the granting or contracting agency.

(3) That the committee report include a list of individuals and firms awarded grants during the 1981-1982 interim for publication in an interim study report.

(4) That the committee report its findings to the 48th Legislature, specifically including its findings under (2) above, and, if necessary, draft legislation to implement its recommendations.

Approved April 16, 1981.

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO REMOVE ALCOHOL FUEL PRODUCTION PERMITS AND INFORMATION FROM THE CONFIDENTIALITY REQUIREMENTS OF THE INTERNAL REVENUE CODE AND URGING THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TO MAKE THIS INFORMATION AVAILABLE.

WHEREAS, the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury interprets the confidentiality provisions of Section 6103 of the Internal Revenue Code to include alcohol fuel producer's permits and related information; and

WHEREAS, availability of this information is of great importance to the State of Montana in monitoring alcohol fuel production in the state; and

WHEREAS, the confidentiality requirements of the Internal Revenue Code place substantial administrative and procedural burdens on state agencies seeking information.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Congress of the United States is urged to remove the alcohol fuel producer's permit, the application therefor, and other related nontax information from the confidentiality provisions of the Internal Revenue Code.

(2) That the Bureau of Alcohol, Tobacco and Firearms make the information described above available to interested persons.

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(3) That copies of this resolution be sent by the Secretary of State to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Montana Congressional Delegation, and the Bureau of Alcohol, Tobacco and Firearms.

Approved April 17, 1981.

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE REAGAN ADMINISTRATION AND CONGRESS TO FULLY FUND FOREST FIRE PROTECTION ASSISTANCE.

WHEREAS, Montana's forested lands provide revenue and other direct benefits to the state and nation; and

WHEREAS, because of tree mortality due to insect infestations and the existing drought situation, Montana faces the possibility of severe forest fire conditions in 1981; and

WHEREAS, there may be a possibility of obtaining supplemental federal funds for the 1981 fire season (federal fiscal year 1981); and

WHEREAS, the Reagan administration may propose a reduction in the present federal level of financial support to state and local fire forces for the 1982 fire season (federal fiscal year 1982); and

WHEREAS, without sufficient financial support, the state is facing the possibility of massive forest closures to protect Montana's forested lands from fire, which will have a substantial negative impact on the state's economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Reagan administration and Congress are requested to support full federal funding of forest fire protection assistance at a level of $25,135,000 nationally for federal fiscal year 1982, as authorized under section II of the federal Clarke-McNary Act.

BE IT FURTHER RESOLVED, that the Reagan administration and Congress are urged to support supplemental financial support for forest fire protection assistance for federal fiscal year 1981.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States and to Montana's Congressional Delegation.

Approved April 2, 1981.

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SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PUBLIC SCHOOL TRANSPORTATION NEEDS, INCLUDING FUNDING AND ELIGIBILITY REQUIREMENTS FOR SUCH TRANSPORTATION.

WHEREAS, section 20-10-101, MCA, requires that any child, to be eligible for transportation provided by the school district, must reside at least 3 miles from the nearest school; and

WHEREAS, urban areas of the state are experiencing sprawl, which results in school children living within 3 miles from school being forced to walk to school along unsafe streets and highways; and

WHEREAS, the 3-mile limit is strictly arbitrary; and

WHEREAS, significant energy conservation would result from providing school bus transportation within 3 miles of schools; and

WHEREAS, only one-third of the school children in the state receive public transportation; and

WHEREAS, taxpayers residing in school districts providing transportation presently are forced to assume the largest share of the cost of such transportation, without receiving a proportionate benefit because of the 3-mile limit; and

WHEREAS, additional and more equitable transportation funding alternatives are needed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study public school transportation needs, including funding and eligibility requirements for such transportation.

(2) That the committee include in its study a consideration of at least the following:

(a) the rationale of the 3-mile rule concerning eligibility for public school transportation and whether it continues to be valid;

(b) alternative methods of funding school transportation, with particular emphasis on seeking the most equitable method considering the responsibility of the state as a whole for the education of its youth.

(3) That the committee submit to the 48th Legislature a report of its findings, together with recommendations for legislation, if any, necessary to implement such findings.

Approved April 15, 1981.

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SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO AMEND PUBLIC LAW 90-583, THE CARLSON-FOLEY ACT OF 1968, TO REQUIRE THE FEDERAL GOVERNMENT TO IMPLEMENT A MANAGEMENT PROGRAM FOR THE PREVENTION, CONTROL, AND CONTAINMENT OF NOXIOUS PLANTS ON LANDS ADMINISTERED BY FEDERAL AGENCIES.

WHEREAS, undesirable plant species, including noxious plants, on lands administered by federal agencies have been and continue to be a major problem in Montana and other western states because they reduce forage needed for livestock production and wildlife and interfere with the forest product industries; and

WHEREAS, certain federal agencies managing public lands have failed to initiate, implement, and fund viable management programs for the prevention, control, and containment of these undesirable plant species; and

WHEREAS, two federal laws of beneficial intent address noxious weed management, Public Law 90-583, the Carlson-Foley Act of 1968, which calls for the destruction of noxious weeds, and Public Law 93-629, the Federal Noxious Weed Act of 1974, which regulates the movement of noxious weeds; and

WHEREAS, neither federal law requires the federal agencies administering public lands to manage for the prevention, control, and containment of undesirable plant species; and

WHEREAS, the management practices of the federal agencies administering these lands are inconsistent with the management practices for undesirable plant species on the existing state, county, and private levels; and

WHEREAS, section 3 of Public Law 90-583, the Carlson-Foley Act of 1968, reads: "There are hereby authorized to be appropriated to departments or agencies of the Federal Government such sums as the Congress may determine to be necessary to carry out the purposes of this Act." However, no appropriations have yet been authorized under this section.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That section 3 of the Carlson-Foley Act of 1968 be replaced with a new section that would read as follows: "The departments or agencies of the Federal Government shall implement and pursue an effective management program for the prevention, control, and containment of noxious plants on lands under their control or jurisdiction."

BE IT FURTHER RESOLVED, that such a management program be in accordance with state and federal weed laws.

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BE IT FURTHER RESOLVED, that such management program be implemented in cooperation with the state Department of Agriculture or with a state-designated weed control organization.

BE IT FURTHER RESOLVED, that the Secretary of State of the State of Montana send copies of this resolution to the Governor, the Montana Congressional Delegation, the President of the United States Senate, the Speaker of the United States House of Representatives, the chairman of the United States Senate Agriculture, Nutrition, and Forestry Committee, the chairman of the United States House Agriculture Committee, and the chairmen of the House and Senate Agriculture Committees of North Dakota, South Dakota, Wyoming, and Idaho.

Approved April 2, 1981.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO INCREASE WEED CONTROL AND MANAGEMENT PROGRAMS ON FEDERAL, STATE, AND PRIVATE LANDS AND TO ALLOW FEDERAL LAND MANAGEMENT AGENCIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH STATE AND LOCAL WEED MANAGEMENT AGENCIES.

WHEREAS, the State of Montana is concerned with the management of noxious weeds on private, state, and federal lands; and

WHEREAS, noxious weed infestations in Montana result in an agricultural loss of at least $100 million annually because of weed competition and the consequent reduction in crop production; and

WHEREAS, many acres of federal lands are infested with noxious weeds which reduce grazing capabilities and infest state and private lands that are managed for the control of noxious weeds; and

WHEREAS, a major problem for agriculture and livestock producers is the continuing and, in some cases, increasing infestations of noxious weeds on their lands; and

WHEREAS, county and state agencies and universities are responsibly increasing their weed management efforts in areas of research, education, coordination, and integrated control; and

WHEREAS, certain federal laws, regulations, and policies impede the establishment of cooperative weed management programs between federal land management agencies and state agencies, counties, and private landowners.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Congress of the United States is requested to amend section 5 of Public Law 95-313, the Cooperative Forestry Assistance Act of 1978, which pertains to insect and disease control on nonfederal forest lands, to include noxious weed control and management through cooperative efforts on federal, state, and private lands.

BE IT FURTHER RESOLVED, that the Congress is requested to allow federal land management agencies to enter into cooperative weed surveillance and control agreements with state and local weed management agencies for providing services and funds.

BE IT FURTHER RESOLVED, that the Congress is requested to increase the funding of weed management programs conducted by federal land management agencies on federal lands.

BE IT FURTHER RESOLVED, that the Montana Department of Agriculture report to the 48th Legislature the status of congressional action with regard to this resolution.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Montana Congressional Delegation, the Montana Department of Agriculture, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, the chairman of the U.S. Senate Agriculture, Nutrition, and Forestry Committee, the chairman of the U.S. House Agriculture Committee, the chairmen of the House and Senate Agriculture Committees of Idaho, North Dakota, South Dakota, and Wyoming, and the Secretaries of the United States Departments of Agriculture and Interior.

Approved March 31, 1981.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR THE CONGRESS OF THE UNITED STATES TO PROPOSE AND SUBMIT TO THE STATES AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES REQUIRING, WITH CERTAIN EXCEPTIONS, A BALANCED FEDERAL BUDGET.

WHEREAS, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues; and

WHEREAS, convinced that fiscal irresponsibility at the federal level, with the inflation that results from this policy, is the greatest threat that faces our nation, the Legislature firmly believes that constitutional restraint is vital to bring the fiscal discipline needed to restore financial responsibility; and

WHEREAS, under Article V of the Constitution of the United States, amendments to the federal Constitution may be proposed by the Congress whenever two-thirds of both houses consider it necessary.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States requiring that, in the absence of a national emergency, the federal budget be balanced each fiscal year within 4 years after the amendment is ratified by the various states.

(2) That as this resolution is the exercise of a fundamental power of the sovereign states under the Constitution of the United States, it is requested that receipt of this resolution by the Senate and the House of Representatives of the Congress of the United States be officially noted and entered upon their respective records and that the full text of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress.

(3) That copies of this resolution be sent by the Secretary of State of Montana to the Secretary of State and presiding officers of both houses of the legislatures of each state in the Union, the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, and to each member of the Montana Congressional delegation.

Approved April 9, 1981.

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA SUPREME COURT TO PREPARE PROPOSED LEGISLATION FOR CONSIDERATION BY THE 48TH LEGISLATURE TO RECONCILE CONFLICTS BETWEEN THE MONTANA RULES OF EVIDENCE AND THE STATUTORY PROVISIONS ON EVIDENCE CONTAINED IN THE MONTANA CODE ANNOTATED.

WHEREAS, The Montana Rules of Evidence were adopted in 1977 by order of the Montana Supreme Court as rules of practice under its authority in Article VII, section 2, of the Montana Constitution; and

WHEREAS, there are numerous statutory provisions in the Montana Code Annotated regarding evidence, particularly in Title 26, chapters 1 through 3; and

WHEREAS, the statutory provisions on evidence, which predate the Montana Rules of Evidence by many decades, in many cases conflict with the Montana Rules of Evidence and should be reconciled with the Montana Rules of Evidence; and

WHEREAS, the Montana Supreme Court would be greatly affected by changes in the statutory provisions on evidence because of the impact of the changes on the practicing bar and the close connection between the

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statutory provisions on evidence and the Supreme Court-promulgated Montana Rules of Evidence; and

WHEREAS, the Montana Supreme Court has continuing contact with the practicing bar of Montana through the authority granted it by Article VII, section 2, of the Montana Constitution, through the State Bar of Montana, and through the University of Montana School of Law, and these contacts may be used to effectively solicit ideas for necessary changes and to insure notice to the bar regarding the effects of the proposed changes; and

WHEREAS, the Montana Supreme Court Commission on Rules of Evidence, which prepared the Montana Rules of Evidence, is still in existence and has in its membership the qualified persons to effectively study and prepare suggested legislation on evidentiary conflicts in the law, the end product of which could be complementary to the Montana Rules of Evidence; and because the Montana Rules of Evidence have been in effect for 4 years, this would be an advantageous time for the Commission to recommend substantive changes in statutory evidence provisions to make Montana's provisions on evidence modern, effective, and efficient.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in order to reconcile conflicts between the Montana Rules of Evidence and the statutory provisions on evidence contained in the Montana Code Annotated, the Montana Supreme Court is requested to:

(1) study the conflicts between the Montana Rules of Evidence and current statutory provisions on evidence;

(2) draft legislation for the 48th Legislature to eliminate such evidence conflicts and in connection therewith to propose any substantive changes in statutory provisions on evidence it considers advisable; and

(3) prepare any reports or commission comments it feels would be necessary to explain the suggested legislation.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Chief Justice of the Montana Supreme Court.

Approved April 6, 1981.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONTINUATION OF FEDERAL FUNDING FOR THE MAGNETOHYDRODYNAMICS ENGINEERING TEST FACILITY IN MONTANA.

WHEREAS, utility companies in Montana are considering additional coal-fired steam electric generating plants to supply projected demands for electricity in the early 1990's; and

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WHEREAS, previous Montana Legislatures have supported the development of magnetohydrodynamics (MHD), recognizing its very high potential to provide electric power in Montana and the nation in a highly efficient, water conservative, and environmentally acceptable manner; and

WHEREAS, the successful development and commercialization of the MHD process will enhance the marketability of Montana's coal resources and will provide substantial economic and energy conservation benefits in Montana, allowing longer utilization of coal reserves; and

WHEREAS, the Component Development and Integration Facility (CDIF) nearing completion south of Butte is an integral part of the nation's MHD research and development program; and

WHEREAS, development of this MHD facility in Butte-Silver Bow is nearing the stage of testing of engineering-scale hardware with the near-certain promise of successful operation; and

WHEREAS, President Reagan recently announced plans to discontinue federal funding for the development of MHD; and

WHEREAS, private utilities and other companies do not have the capital or other technical resources available to them to continue the project; and

WHEREAS, such a termination of funding for MHD would result in a waste of the resources that have been devoted to development of the technology to its present state of near-completion.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the United States, the Office of Management and Budget, the Secretary of Energy, and the U.S. Congress are strongly urged to continue funding for the MHD project in order to complete development of components at a testable scale so that work toward commercialization of the process may begin.

(2) That copies of this resolution be sent by the Secretary of State to the President of the United States, the Secretary of Energy, and to Montana's Congressional Delegation.

Approved April 15, 1981.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON FUNDING METHODS USED BY SCHOOL DISTRICTS TO FINANCE PUBLIC PENSION PLANS.

WHEREAS, a school district contributes 6.312% of salary for each employee who is a member of the Teachers' Retirement System and 5.90% of salary for each employee who is a member of the Public Employees'

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Retirement System to fund retirement benefits for teaching and nonteaching personnel; and

WHEREAS, school districts finance their contributions to the public pension plans through countywide property tax levies; and

WHEREAS, these levies ranged from 3.06 to 39.02 mills for the 1980-1981 school year and generated over $33 million; and

WHEREAS, the amount of mills for each school district increases annually to match increases in employees' salaries; and

WHEREAS, this method of funding public pension plans represents a tremendous burden on Montana property owners and a growing liability for the school districts; and

WHEREAS, the 1979 Montana Legislature contributed to the counties' financial burden by requiring school districts to fund retirement costs for special education personnel through the countywide property tax.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the current funding method used by school districts to finance public pension plans and to explore alternative methods of meeting the districts' obligation to the Teachers' and Public Employees' Retirement Systems while reducing the tax burden on property owners.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations, including recommendations for appropriate remedial legislation, to the 48th Legislature.

Approved April 20, 1981.

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING MODIFICATION OF THE ADMINISTRATIVE RULE GOVERNING THE ASSESSMENT OF COMMERCIAL FURNITURE AND FIXTURES.

WHEREAS, subsection (1) of section 15-8-111, MCA, provides that taxable property is to be assessed at 100% of its market value, the price available to a willing seller from a willing buyer; and

WHEREAS, subsection (1)(e) of section 15-6-139, MCA, places commercial furniture and fixtures in class nine for property tax purposes and this property is of a different nature than other property subject to trending; and

WHEREAS, the Department of Revenue formerly provided for the assessment of such property at its depreciated original cost; and

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WHEREAS, the Department presently requires depreciated original cost to be used for purposes of determining net business income subject to taxation; and

WHEREAS, the Department in 1977 began the practice of employing a "trended" original cost as the means of valuing such property prior to the application of depreciation schedules; and

WHEREAS, the Legislature has never mandated the use of a "trending" process in assessing such property; and

WHEREAS, the Legislature finds that the depreciated original cost of commercial furniture and fixtures is a more appropriate standard for the determination of market value of this property.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Revenue shall initiate rulemaking proceedings to modify its depreciation schedules for the assessment of commercial furniture and fixtures for tax years beginning after December 31, 1981, as embodied in section 42.21.134 of the Administrative Rules of Montana, so as to continue the present use of 3-, 5-, and 10-year depreciation tables while deleting the use of a "trend factor" to arrive at a "percentage trended depreciation" for property tax purposes. The modified rule shall contain tables for the determination of depreciated original cost values substantially similar to those contained in section 42.21.134 of the Administrative Rules of Montana as promulgated and effective on February 1, 1981.

Approved April 22, 1981..

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE AUDIT COMMITTEE IN CONJUNCTION WITH ITS PERFORMANCE AUDIT TO CONSIDER THE CURRENT AND ONGOING PUBLIC UTILITY PROCEDURES AND PRACTICES OF THE PUBLIC SERVICE COMMISSION TO DETERMINE THE IMPACT THEREOF ON BOTH CONSUMERS AND UTILITIES AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the Public Service Commission in its regulation of public utilities performs a legislative function since the setting of public utility rates is a quasi-legislative act, which should be guided where appropriate by informed legislative oversight; and

WHEREAS, the Legislature is further involved in utility regulation because, under the Montana Constitution, a Legislative Consumer Committee and the Montana Consumer Counsel operate on behalf of the

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Legislature to ensure that consumers are fully represented in Public Service Commission proceedings; and

WHEREAS, public utilities providing essential utility service in the State of Montana have presented to this Legislature proposed legislation and evidence which tend to indicate that earned returns have consistently fallen short of the levels determined by the Commission to be just and reasonable, with the result that the financial viability and ability of these industries to attract capital may be impaired with resulting detriment to the quality of utility service; and

WHEREAS, the Commission has frequently sought increased funding in order to more effectively carry out its ratemaking and regulatory responsibilities; and

WHEREAS, the Legislature in regular session does not have the time or the staff to conduct an intensive study of complex issues such as ratemaking procedures and results and adequacy of Commission appropriations and staff, it is essential that the Montana Legislature by interim committee study and investigate the Montana public utility regulatory system and consider proposals for the improvement thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee in conjunction with its performance audit to be performed in the 1981-1983 interim, be assigned to study the Montana public utility regulatory system and the results produced by that system to determine:

(1) whether or not current regulatory procedures result in avoidable regulatory lag and whether or not proposals for alternative regulatory procedures have merit;

(2) whether or not public utilities operating in Montana are receiving from the Commission a genuine opportunity to earn the reasonable cost of conducting their business in an inflationary environment and a genuine opportunity to earn the returns determined by the Commission to be just and reasonable;

(3) whether or not alternative methods, policies, and regulatory procedures might be employed to produce a more equitable balancing of the interests of consumers and utilities; and

(4) whether the funding and staffing of Commission operations are adequate to achieve prompt equitable regulatory decisions.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 20, 1981.

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SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE FINANCE COMMITTEE TO STUDY THE EFFICIENCY OF THE SEVEN AREA AGENCIES ON AGING AND THE STATE AGING SERVICES BUREAU IN MONTANA AND THEIR ACCOUNTABILITY TO THE PEOPLE THEY SERVE.

WHEREAS, there are seven area agencies on aging in Montana organized under the federal Older Americans Act; and

WHEREAS, each agency is responsible for developing an area plan for resource development and delivery of services to older people; and

WHEREAS, opinion varies considerably among the seven area agencies and the older Montanans residing within those areas as to the accountability of, the cost effectiveness of, and the need for operating the local area agencies; and

WHEREAS, opinion indicates that certain area agencies are successful in maintaining efficient operations and providing meaningful and efficient implementation of services, while other area agencies are deficient in meeting these objectives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee is requested to study the efficiency of the seven area agencies on aging and the State Aging Services Bureau in Montana and their accountability to the people they serve.

BE IT FURTHER RESOLVED, that the Committee review the efficiency and meaningfulness of the plans adopted by the area agencies and approved by the Department of Social and Rehabilitation Services.

BE IT FURTHER RESOLVED, that the Committee evaluate to what extent meaningful cooperation exists between the area agencies and their respective local government funding sources.

BE IT FURTHER RESOLVED, that the Committee report its findings and recommendations to the 48th Legislature.

Approved April 16, 1981.

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SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE NEED TO CLARIFY THE DEFINITION OF YOUTH IN NEED OF SUPERVISION, OF THE POLICIES AND PRACTICES OF AGENCIES FINANCING SERVICES FOR YOUTH PLACED OUT OF THEIR HOMES, OF THE NEED FOR A SIMPLIFIED MECHANISM TO DISTRIBUTE FUNDS FOR YOUTH PLACED OUT OF THEIR HOMES, AND OF THE PROBLEMS OF CHEMICALLY DEPENDENT AND EMOTIONALLY DISTURBED YOUTH IN PRIVATE AND PUBLIC INSTITUTIONS; AND REQUIRING A REPORT AND RECOMMENDATIONS TO THE LEGISLATURE.

WHEREAS, the declared policy of the State of Montana is to insure that all youth are afforded an adequate physical and emotional environment to promote normal development and to compel a parent or guardian to perform the moral and legal duty owed to a youth; and

WHEREAS, the parent has a fundamental right to establish guidelines for the youth within the family as the basic social unit, and the state has a duty to support the family by providing services and legal sanctions; and

WHEREAS, the state has the responsibility to protect children whose health and welfare are threatened by the conduct of those charged with their care; and

WHEREAS, several agencies are presently functioning under an uncoordinated and complicated formula for financing services for youth placed out of their homes; and

WHEREAS, some youth by their own conduct, behavior patterns, chemical dependence, or emotional disturbance jeopardize their own well-being and the persons and property of others.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the definition of youth in need of supervision in the Montana Youth Court Act to clarify governmental responsibility for these youth and their families;

(2) policies and practices of governmental agencies financing services for youth placed out of their homes under the Montana Youth Court Act and development of a simplified mechanism to distribute these funds and share the burden between state and local governments while encouraging treatment of these youth in their own communities;

(3) problems of residential services for chemically dependent youth and emotionally disturbed youth in private and public institutions; and

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(4) the effectiveness and adequacy of public and private services and programs designed to assist youth and families in dealing with problems to prevent youth from having to be removed from their homes.

BE IT FURTHER RESOLVED, that the committee enlist the advice and assistance of the youth court probation officers, district youth court judges, county attorneys, defense attorneys, county commissioners, law enforcement officers, Office of Public Instruction, Youth Justice Council, Department of Justice, Department of Social and Rehabilitation Services, Department of Institutions, and the Montana Council of Private Child Caring Agencies.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 21, 1981.

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF DELAYS IN THE ADMINISTRATION OF APPEALS OF CRIMINAL CASES IN THE CRIMINAL JUSTICE SYSTEM OF MONTANA AND MEANS BY WHICH THE INSTITUTIONAL CAUSES OF THESE DELAYS COULD BE LAWFULLY ELIMINATED; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, recent cases have shown that persons charged or convicted of criminal offenses have brought multiple and successive appeals or appellate requests before state and federal courts, which should have been consolidated to avoid multiplicity of appellate procedures, thereby delaying and often denying the proper administration of criminal justice; and

WHEREAS, multiple appeals and multiple attempts at postconviction relief utilize critical state resources, reduce the deterrent effect of capital punishment, and decrease respect for the legal system; and

WHEREAS, the Chief Justice of the United States Supreme Court has recently called for changes in the federal judicial system to speed the imposition of punishment for criminal offenders; and

WHEREAS, changes in the current legal system of appeals and other forms of postconviction relief may involve the constitutional rights of criminal offenders under complicated and conflicting judicial opinions and under the interrelated legal systems of both the state and federal government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

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(1) the causes of and the means to prevent delays in the criminal justice system occasioned by multiple and successive appeals or appellate requests in state or federal courts made by those charged with or convicted of criminal offenses;

(2) the minimum appeal process or other postconviction relief that the state must afford a person, under the state and federal constitutions;

(3) the means by which appeals or other requests for relief by those charged with or convicted of criminal offenses may be consolidated in one proceeding and thereby provide a one-stop or one-time review of such matters, which means shall nevertheless guarantee the constitutional rights of such persons;

(4) any other aspect of the criminal justice system that may relate to appellate relief.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations, and that the report shall be sent to Montana's Congressional Delegation.

Approved April 16, 1981.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE INSURANCE LAWS OF THE STATE OF MONTANA AND OF THE INSURANCE INDUSTRY AS IT RELATES TO MONTANA AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 48TH LEGISLATURE.

WHEREAS, over 40 bills have been introduced in the 47th Legislature pertaining to insurance; and

WHEREAS, the area of insurance law is complex and cannot be adequately considered by the Legislature during the time constraints of a legislative session; and

WHEREAS, insurance is an expanding industry touching the lives of all Montanans; and

WHEREAS, certain types of insurance are compulsory for engaging in designated activities; and

WHEREAS, the fairness and adequacy of Montana's regulation of the insurance industry need to be considered.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the insurance laws of the State of Montana and of the insurance industry as it

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relates to Montana. The study shall consider all aspects of insurance, including but not limited to:

(1) the fairness and effectiveness of insurance rate policies and practices;

(2) the fairness to the consumer and the insured of Montana's existing insurance laws and regulations;

(3) the adequacy of Montana's existing laws and regulations to govern the activity of the insurance industry within the state;

(4) the extent, scope, and identity of the insurance industry's involvement in Montana's political process and in the lobbies, both before the legislative and administrative branches of government;

(5) the alternatives, benefits, and liabilities of:

(a) private self-insurance;

(b) commercial insurance; and

(c) public self-insurance, including state and local governmental entities;

(6) the cost, fairness, and effectiveness of compulsory insurance laws;

(7) the investments by insurance companies in Montana; and

(8) the adequacy of Montana's reserve requirements with regard to the protection of the consumer insured.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 15, 1981.

SENATE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LICENSING LAWS REGARDING FACILITIES THAT PROVIDE PROTECTIVE OVERSIGHT, SUPERVISION, PERSONAL CARE, REHABILITATION, AND HEALTH CARE TO THE YOUNG, DISABLED, INFIRM, OR ELDERLY OF THE STATE.

WHEREAS, the licensing laws for ensuring the protection of various groups of young, disabled, infirm, or elderly have been developed in a disjointed manner over the years; and

WHEREAS, the Department of Health and Environmental Sciences, the Department of Social and Rehabilitation Services, and the Department of Institutions have responsibility for licensing and certifying the same or

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similar facilities and each department may require a different procedure for licensing; and

WHEREAS, federal regulations have required amendments to state statutes; and

WHEREAS, the providers of social and health services are confused about the constant changes in the licensing laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to study licensing laws regarding facilities that provide protective oversight, supervision, personal care, and health care to the young, disabled, infirm, or elderly of the state.

(2) That the study include but not be limited to a consideration of the licensing laws regarding:

(a) child-care agencies;

(b) licensed day care;

(c) shelter and foster care facilities;

(d) home health care;

(e) long-term care facilities;

(f) adult foster family care homes;

(g) community homes for the developmentally disabled;

(h) residential and transitional living facilities, including rooming houses, boarding homes, and retirement homes;

(i) swing beds; and

(j) alcoholism and drug treatment facilities.

(3) That the Committee examine the possibility of developing a comprehensive licensing law governing all social and health care facilities.

(4) That the Committee report its recommendations and proposed legislation, if any, to the 48th Legislature.

Approved April 23, 1981.

SENATE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PROMULGATION OF A RULE BY THE DEPARTMENT OF REVENUE PROVIDING FOR THE USE OF THE MOST RECENT CENSUS DATE OR POPULATION ESTIMATE DATE ESTABLISHED BY THE CENSUS BUREAU, U.S. DEPARTMENT OF COMMERCE, IN DETERMINING ALL-BEVERAGE LIQUOR LICENSE QUOTAS.

WHEREAS, the quota of all-beverage liquor licenses for a county or an incorporated city or town under section 16-4-201, MCA, is based upon census figures or population estimates prepared by the Census Bureau, U.S. Department of Commerce; and

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WHEREAS, the Department of Revenue is the executive agency charged with the issuance of all-beverage liquor licenses and has no administrative rules governing their policy in respect to the use of census data or population estimates; and

WHEREAS, it appears that when the Department of Revenue is preparing to issue quota all-beverage licenses based upon the decennial census it recomputes the census by considering boundary changes not reflected in the census and then adjusts population to the boundary changes instead of using the Census Bureau's recognized boundaries and populations as of census day; and

WHEREAS, the all-beverage license quota is to be reexamined more often than every 10 years under the provisions of section 16-4-502, MCA (as amended by Chapter 25, Laws of 1981, effective March 4, 1981), using intervening population estimates prepared by the Census Bureau and, under present Department of Revenue policy, each such estimate is subject to review and adjustment, thus defeating the use of a population estimate or census as a basis for license quotas; and

WHEREAS, such an arbitrary method of readjustment at whatever time the Department of Revenue elects to figure quotas for all-beverage licenses causes uncertainties for persons affected, causing further dissatisfaction with state government; and

WHEREAS, such uncertainty and ambiguity would be eliminated by providing that population and established and recognized boundaries shall be determined only in reference to the latest census or, when there is no census, upon the most recent Bureau of Census population estimates; and

WHEREAS, the use of Census Bureau census or population estimate dates would provide certainty and predictability of action because there would be only one standard—that of the Bureau of the Census, which provides a specific census date, area, and population to be used for quota allocations, avoiding uncertain areas and ambiguous dates for population area computation, and any changes occurring after that specific date are reflected in the next census or estimate of the Bureau of the Census.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the clear legislative intent and purpose of the phrase "most recent official United States Census as authorized by Congress" as contained in sections 16-4-201 and 16-4-502, MCA, as amended by Chapter 25, Laws of 1981, is to direct the Department of Revenue to recognize and follow the regulations and procedures of the Bureau of Census, United States Department of Commerce, in establishing census data and in determining the cutoff dates for recognition of boundary changes for the decennial census operations.

(2) That under the authority of section 16-1-303, MCA, implementing sections 16-4-201 and 16-4-502, MCA, the Department of Revenue shall proceed within 30 days of the passage of this resolution to adopt a rule providing that the population of counties and incorporated cities and towns to be used to determine the quotas for all-beverage liquor licenses

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be the unaltered and unadjusted most recent census or population estimate established by the Census Bureau, U.S. Department of Commerce, or the most recent population estimates as provided in 16-4-502, and shall therefore reflect on a specified date an official population within specified boundaries to be used to ascertain the applicable quotas.

Approved April 23, 1981.

SENATE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE ASSIGNMENT TO AN APPROPRIATE INTERIM COMMITTEE OF A STUDY OF MONTANA'S CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES AND ITS ADMINISTRATION AND ENFORCEMENT.

WHEREAS, the Constitution of Montana requires in Article XIII, section 4, that the Legislature enact a code of ethics prohibiting conflict between public duty and private interest for members of the Legislature and all state and local officers and employees; and

WHEREAS, the people of Montana have overwhelmingly affirmed this constitutional principle as well as the principle of openness and integrity in government by their approval of Initiative 85, the lobbyist disclosure initiative; and

WHEREAS, our government derives its power directly from the people, and a credible, effective government depends on maintaining the people's confidence and trust; and

WHEREAS, the 1977 Legislature, in acknowledgment of the need to encourage ethical conduct among public officers and employees, enacted a code of ethics; and

WHEREAS, recent events have demonstrated deficiencies in the current code of ethics and have raised questions of interpretation, administration, and enforcement of that code.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the code of ethics for public officers and employees and its effectiveness, clarity, administration, and enforcement.

(2) That the committee develop recommendations for resolving questions of:

(a) whether a consensus exists among Legislators, other public officers, and the public as to what constitutes ethical conduct and conflict of interest;

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(b) whether the code of ethics acts merely as a guideline or has the force of law;

(c) the actual effect of the code of ethics; and

(d) the need for a vehicle of administration and enforcement as well as clear remedies under the code.

(3) That the committee submit its findings and recommendations to the 48th Legislature.

Approved April 27, 1981.

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House and Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following legislative employee positions are classified in the grades indicated. The grades are those set forth in 2-18-312, MCA, pay schedule for fiscal year 1981, and that pay schedule applies;

Grade 20
Chief Clerk of the House
Secretary of the Senate

Grade 16
Sergeant-at-arms

Grade 14
Chaplain

Grade 12
Assistant to Secretary of Senate
Assistant to Chief Clerk of House

Grade 11
Chief Stenographer
Bills Clerk
Journal Clerk
Senate Business Manager
Assistant Sergeant-at-arms

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Assistant Senate Business Manager
Secretary to the following:
President, Speaker, Secretary of Senate, Chief Clerk, Majority Leader and Minority Leader.

Grade 10
Bills Coordinator
Assistant Chief Stenographer
Assistant Journal Clerk
Assistant Bills Clerk
Secretary
Bills Distributor
Amendments Coordinator

Grade 9
Assistant Bills Coordinator
Assistant Bills Distributor

Grade 8
Assistant Amendments Coordinator

Grade 7
Status Input Technician
Reading Clerk
Stenographer
Supply Clerk
Posting Clerk

Grade 6
Typist
Proofreader
Clerk-Typist
Status Clerk

Grade 5
Parking Attendant
Doorman
Security Guard
Page Supervisor

Grade 1
Page

(2) That the personal aide to Representative Gould shall be paid a salary of $1,000 per month;

(3) That positions classified at Grade 16 and above are considered professional, or "exempt" positions and are not subject to overtime pay. Employees in such positions shall receive the salary as shown in the salary schedule, regardless of the number of hours worked;

(4) That positions classified below Grade 16 are subject to overtime pay and recorded hours of work. Hours over 40 a week worked by an employee so classified will be compensated for at the rate of 1 ½ times the employee's regular hourly wage;

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(5) That an employee with no previous legislative experience shall be classified at Step 2 of the appropriate grade, however no employee will be paid less than the federal minimum wage. For each year of legislative experience, an employee shall be advanced one step to determine the applicable step within the grade;

(6) That no additional benefits such as sick leave, vacation leave, holiday pay or holiday time off, health insurance, or longevity allowances accrue to legislative employees. In lieu of such benefits available to other state employees, legislative employees shall be paid an additional 14 cents an hour;

(7) That 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits does not apply to the Legislature;

(8) That a Chaplain be paid for 2 hours for each legislative day served;

(9) That Public Employee Retirement System benefits are available at the option of the employee if the employee pays the employee and employer contribution.

Approved January 19, 1981.

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING A SELECT COMMITTEE TO RESOLVE QUESTIONS RELATING TO THE VALUATION OF COMMERCIAL AND RESIDENTIAL PROPERTY FOR TAXATION.

WHEREAS, there appears to be a discrepancy between the way commercial property and residential property in Montana is valued for taxation; and

WHEREAS, plaintiffs in many lawsuits filed against the State of Montana allege that these discrepancies result in valuation disparities as high as 34%; and

WHEREAS, the State Tax Appeal Board has determined that such discrepancies do exist and has recommended relief for those taxpayers adversely affected; and

WHEREAS, the Department of Revenue has not agreed with plaintiffs that a serious discrepancy exists and has appealed Board determinations to the contrary; and

WHEREAS, the Montana Supreme Court has agreed in principle that there is an unconstitutional discrepancy, but does not agree that a 34% across-the-board measure of the discrepancy is necessarily correct; and

WHEREAS, local government units, which depend upon property tax revenues to provide government services, have been unable to collect revenues from a great deal of commercial property while this controversy continues and have suffered financial hardship and have seen tax increment

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financing programs and other needed local government activities jeopardized; and

WHEREAS, the 47th Legislature must address this issue so as to assure that an equitable method for valuation of commercial and residential property is achieved, to relieve the taxpayers and the state of the burden of continued lawsuits, and to settle the financial questions plaguing taxpayers and local governments neither of whom have the use of taxes paid under protest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature constitute a select committee to meet and recommend to the Legislature the best means to achieve remediation of the problems recited above; and

BE IT FURTHER RESOLVED, that the committee consist of two members of the House, one from each political party, appointed by the speaker; two members of the Senate, one from each political party, appointed by the Committee on Committees; and the chairman of the Revenue Oversight Committee; and

BE IT FURTHER RESOLVED, that the chairman of the State Tax Appeal Board and the director of the Department of Revenue are requested to serve as members of the committee; and

BE IT FURTHER RESOLVED, that the select committee submit its recommendations to the Legislature not later than the 50th legislative day to allow for introduction and consideration of legislation during this session; and

BE IT FURTHER RESOLVED, that Joint Rule 6-7 is suspended to allow introduction of such legislation as may be recommended by the committee.

Approved February 12, 1981.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CAUTION MOTHERS AND RETAILERS ABOUT THE EFFECT OF CERTAIN DRUGS ON UNBORN CHILDREN.

WHEREAS, many prescription and nonprescription drugs, including alcoholic beverages, are harmful to the fetus when ingested by a pregnant woman; and

WHEREAS, many such potentially harmful drugs are available over the counter without a physician's prescription; and

WHEREAS, there is a need for more concentrated public education directed toward pregnant women; and

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WHEREAS, particular emphasis should be placed on warning pregnant women about the possible dangers involved in the use of certain commonly available but potentially toxic drugs; and

WHEREAS, the list of drugs which are known to be harmful to pregnant women is continuously growing; and

WHEREAS, even drugs which are not potentially harmful alone can be harmful to a pregnant woman, when taken concurrently with other drugs; and

WHEREAS, fetal alcohol syndrome is increasingly known to be a serious problem in the incidence of birth defects, particularly mental retardation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Health and Environmental Sciences is strongly urged to assume the responsibility for obtaining posters or notices warning of the potential dangers to pregnant women of prescription and nonprescription drugs, including alcoholic beverages.

BE IT FURTHER RESOLVED, that the Department is strongly urged to encourage Montana retailers who sell these products to post such notices in conspicuous locations in their establishments, and that the Department is strongly urged to distribute the posters or notices to retailers willing to post them.

Approved March 16, 1981.

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS AND PRESIDENT OF THE UNITED STATES TO ENACT LEGISLATION THAT ANNUALLY ADJUSTS PERSONAL INCOME TAX LIABILITY FOR INFLATION AND TO ENACT ANY CHANGES IN FEDERAL TAX RATES IN A GENERALLY OPEN AND DIRECT MANNER THAT DOES NOT EXPLOIT THE HIDDEN TAXING MECHANISM OF INCREASING TAX BY INCORPORATING INFLATED INCOME.

WHEREAS, the combination of graduated income tax brackets and inflation tends to increase effective income tax rates on taxpayers whose real incomes are not necessarily increasing; and

WHEREAS, these income tax rate increases occur without legislation that explicitly intends to increase tax rates and therefore constitute hidden changes in the tax rates; and

WHEREAS, Montanans expressed their overwhelming support for state income tax indexing through approval by citizen initiative on November 4, 1980; and

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WHEREAS, the impact of federal income taxes on Montanans is several times greater than the state income tax burden; and

WHEREAS, present growth in tax revenue to the federal government caused by inflation may lessen the federal government's incentive to accomplish what is necessary to slow the inflation rate; and

WHEREAS, it is crucial to our nation's economic health that Congress do what is necessary to slow the growth of federal spending and slow the nation's inflation rate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urges the Congress and President of the United States to enact legislation to annually and automatically adjust the exemptions, deductions, and tax brackets of the federal personal income tax to compensate for changes in the purchasing power of the nation's money unit.

BE IT FURTHER RESOLVED, that the Montana Legislature urges the United States Congress to enact any changes in federal tax rates in an open and direct manner that does not exploit the hidden taxing mechanism that incorporates the effects of inflation.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation and to the President of the United States.

Approved February 18, 1981.

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ESTABLISH AN INTERIM COMMITTEE TO STUDY SALARIES OF LEGISLATIVE STAFF OF PERMANENT COMMITTEES.

WHEREAS, there are five statutory legislative committees with permanent staff; and

WHEREAS, section 2-18-103(3), MCA, exempts legislative staff from the state pay plan; and

WHEREAS, there is no body which has oversight or coordinating authority over the method of remuneration to the staff of the five permanent legislative committees and each committee establishes individually and informally the pay plan for its own staff; and

WHEREAS, there appears to be no common or standard method of classification of employees or uniformity or consistency in criteria for paying employees among the five permanent legislative committees.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That a committee shall be established to conduct a study of permanent legislative committee staff salaries to determine among other options whether there should be consistency among these legislative committees concerning salaries and whether a classification plan should be implemented.

(2) That the committee shall be composed of the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, and the chairman (or his or her appointee) of each of the five statutory legislative committees with permanent staff.

(3) That the committee may request the services of any of the permanent legislative staff.

(4) That the committee may contract for a classification study to be done by an independent contracting entity.

Approved February 11, 1981.

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR THE CONGRESS OF THE UNITED STATES TO PROPOSE AND SUBMIT TO THE STATES AN AMENDMENT TO THE UNITED STATES CONSTITUTION THAT WOULD PROTECT UNBORN CHILDREN.

WHEREAS, the United States Supreme Court has nullified the laws of various states concerning abortion and has interpreted the United States Constitution in a way that permits the destruction of unborn human life; and

WHEREAS, millions of abortions have been performed in the United States since the abortion decisions of the Supreme Court of the United States on January 22, 1973; and

WHEREAS, the Congress of the United States has not to date proposed, subject to ratification, an amendment to the United States Constitution that would protect unborn children; and

WHEREAS, the Montana Legislature endorses the concept of protecting unborn children, except when an unborn child threatens the life of the mother or is the result of rape or incest; and

WHEREAS, under Article V of the Constitution of the United States, amendments to the United States Constitution may be proposed by the Congress whenever two-thirds of both Houses consider it necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Congress of the United States is hereby requested to propose and submit to the states an amendment to the Constitution of the

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United States which would protect unborn children, except when an unborn child threatens the life of the mother or is the result of rape or incest.

(2) That copies of this resolution be sent to the Secretary of State and presiding officers of both houses of the Legislatures of each of the several states in the Union, the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, and to each member of the Montana Congressional Delegation.

Approved February 23, 1981.

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING RONALD REAGAN, THE PRESIDENT OF THE UNITED STATES, TO REVISE THE EXECUTIVE ORDER OF FEBRUARY 1972, BANNING THE USE OF TOXICANTS FROM PREDATOR CONTROL, TO ALLOW THE SUPERVISED USE OF 1080 TO CONTROL PREDATORS.

WHEREAS, the sheep industry of Montana is suffering heavy losses due largely to coyote predation; and

WHEREAS, the cattle industry in Montana also is suffering the loss of calves to coyotes; and

WHEREAS, wildlife in Montana also suffers from increased depredation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Ronald Reagan, President of the United States, is urged to revise the executive order of February 1972, that banned the use of toxicants for predator control, in order that toxicant 1080 be allowed for use under a strictly supervised program of predator control.

BE IT FURTHER RESOLVED, that the President is urged to direct the Environmental Protection Agency and the United States Department of the Interior to revise their rules to allow the use of toxicant 1080 to control predators.

BE IT FURTHER RESOLVED, that the President is urged to recognize the importance of a national policy of maximizing food production and recognize that the sheep industry, which is capable of producing choice red meat and a superior fiber from forage without depleting either food grains or petroleum supplies, is an important part of that policy which presently requires the aid of the President to alleviate the economic crisis caused by predators.

BE IT FURTHER RESOLVED, that the Secretary of State is directed to mail copies of this resolution to Governor Ted Schwinden, President

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Ronald Reagan, the Environmental Protection Agency, the U.S. Department of the Interior, and members of the Montana Congressional delegation.

Approved March 24, 1981.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR S. 1038 IN THE UNITED STATES CONGRESS IMPOSING INSPECTION AND LABELING REQUIREMENTS ON MEAT IMPORTED INTO THE UNITED STATES.

WHEREAS, the Legislature finds that sanitary meat inspection standards in other meat-producing nations cannot be guaranteed to be equal to the standards applied to American meat; and

WHEREAS, the Federal Meat Inspection Act presently allows meat imported into this country, once it is cut or ground, to be mixed or sold with domestic meat, with no requirement that its identity as imported meat be retained; and

WHEREAS, the Federal Meat Inspection Act preempts any state requirements in addition to or different from those it imposes, rendering void any attempt by the State of Montana to impose labeling requirements; and

WHEREAS, S. 1038 has been introduced into the United States Senate by Senator Max Baucus to provide for more stringent inspection requirements for imported meat and to require labeling of imported meat that will provide adequate notice to consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of Montana hereby expresses its enthusiastic support for S. 1038 and urges the Congress of the United States to act favorably and promptly on the bill.

(2) That a copy of this resolution be forwarded by the Secretary of State to the Honorable Thomas P. O'Neill, Speaker of the United States House of Representatives, the Honorable Howard Baker, Majority Leader of the United States Senate, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from Montana, the Honorable Pat Williams, Congressman from Montana's First Congressional District, and the Honorable Ron Marlenee, Congressman from Montana's Second Congressional District.

Approved April 11, 1981.

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HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE FEDERAL ENERGY REGULATORY COMMISSION RELICENSE THE KERR HYDROELECTRIC PROJECT TO THE MONTANA POWER COMPANY.

WHEREAS, the Montana Power Company owns the Kerr Hydroelectric Project located in Lake and Flathead Counties in Montana and partially within the boundaries of the Flathead Indian Reservation and has operated the project under a 50-year license issued by the Federal Power Commission; and

WHEREAS, the Montana Power Company's long-term license to operate the project expired on May 23, 1980; and

WHEREAS, the Montana Power Company has applied to the Federal Energy Regulatory Commission, the successor of the Federal Power Commission, for a new long-term license to operate the project; and

WHEREAS, under the Federal Power Act, the Montana Power Company as licensee of the project must pay the Confederated Salish and Kootenai Tribes of the Flathead Reservation a "reasonable annual charge", which is subject to periodic adjustment, because a portion of the project is located within the Flathead Reservation, such annual charge being currently $2.6 million per year; and

WHEREAS, the Federal Power Act provides that the federal government may, under certain circumstances, take over the project; and

WHEREAS, the project represents a material portion of the property tax base of Lake County, Montana, and also provides property taxes in Flathead County and corporation license taxes and electrical energy producers taxes to the State of Montana; and

WHEREAS, the taking of the project by the federal government will result in a loss of property taxes to Lake and Flathead Counties and the loss of corporation license taxes and electrical energy producers license taxes to the State of Montana; and

WHEREAS, the project provides a significant portion of the Montana Power Company's low embedded cost hydroelectric energy supply for Montana consumers; and

WHEREAS, the taking of the project by the federal government will result in the loss of the project's output to Montana customers; and

WHEREAS, the project, if lost to the Montana Power Company's consumers, could be replaced after delay, if at all, only at very high costs; and

WHEREAS, it appears that the licensing of the project to the Montana Power Company is in the best interest of the citizens of the State of Montana.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Federal Energy Regulatory Commission is strongly urged to issue a new long-term license for the continued operation of the Kerr Hydroelectric Project to the Montana Power Company for the benefit of its consumers.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded by the Secretary of the State of Montana to the Secretary of the Federal Energy Regulatory Commission.

Approved April 3, 1981.

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING STATE PURCHASING OFFICES AND THE DEPARTMENT OF ADMINISTRATION TO PURCHASE REREFINED OIL THAT MEETS QUALITY SPECIFICATIONS AND DIRECTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO STUDY THE FEASIBILITY OF ESTABLISHING A SYSTEM FOR COLLECTING USED OIL IN THE STATE OF MONTANA.

WHEREAS, crude oil is a finite resource in the world and, as a consequence, the price of oil, both domestic and imported, is expected to increase each year; and

WHEREAS, the western Pennsylvania and west Texas fields, which have historically provided much of the domestic crude refined into oils such as lubricating oils, are in serious states of depletion and it is in the national and state interest to reduce United States imports of oil; and

WHEREAS, less than 2% of the average crude oil stream is suitable for use in manufacturing lubrication oils without greatly increasing the energy cost of production; and

WHEREAS, the process of rerefining used oil can recoup from 55-85% of that amount of crude oil refined for lubricating purposes and the process of rerefining oil requires only 25% of the energy that is needed to refine virgin crude oil into a lubricating product; and

WHEREAS, burning of used oil removes it from the mainstream of usefulness and the rerefining of used oil continuously reintroduces the lube faction back into the mainstream as a feed-stock; and

WHEREAS, only 10% of the used oil generated in the United States each year is rerefined; and

WHEREAS, the cost of rerefined lubricating oil could be as much as 50% less than the cost of lubricating oil refined from virgin crude oil and still be of essentially the same quality, depending on production costs and method of production; and

WHEREAS, used lubricating oil may contain up to 7,300 ppm of lead, other heavy metals, and other contaminants that, when released into the air or water through processes such as burning used lubricating oil in a

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boiler, or spreading used oil on unpaved roads to suppress dust or dumping crankcase drainings into lakes or streams, introduce harmful elements into the environment; and

WHEREAS, inexpensive tests exist whereby a sample of oil can be analyzed for quality; and

WHEREAS, Congress, through various acts encourages the study, recycling, development for commercial use and, purchase and sale of used oil recovery and rerefined oil, specifically through the Water Pollution Control Act of 1972, the Energy Policy Conservation Act of 1975, the Department of Energy Organization Act, the National Energy Act of 1978, and the Resource Conservation Recovery Act of 1976; and

WHEREAS, a survey of persons who change their own oil indicates a willingness to return used oil to a recycling source, provided a convenient mechanism for doing so exists.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Administration is urged to purchase and use rerefined oil when it is shown to be equal to or superior in quality to lubricating oil made from virgin crude oil.

(2) That the Department of Natural Resources and Conservation is urged to establish an educational program to inform the public of the hazards of dumping used oil and the benefits of recycling used oil and purchasing rerefined oil.

(3) That the Department of Health and Environmental Sciences is urged to examine the possibilities of establishing a system for collecting used oil in the state of Montana.

(4) That the staff of the Environmental Quality Council is urged to monitor the system presently in use in North Carolina and other states which currently have a successful rerefined oil program in operation.

(5) That the purchasing offices of the Department of Administration and purchasing offices of other state departments, counties, and of school districts are urged, when purchasing lubricating oil, to purchase rerefined oil when it is shown to be equal or superior in quality to lubricating oil made from virgin crude oil.

Approved March 25, 1981.

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CURRENT OVERALL FUNCTIONS AND STAFFING OF THE DEPARTMENT OF INSTITUTIONS TO DETERMINE THE EFFECTIVENESS OF THE DELIVERY OF INSTITUTIONAL SERVICES BY THE STATE; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the primary responsibility of the Department of Institutions is the administration and operation of the individual institutions located throughout the state under its control; and

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WHEREAS, from time to time there occur serious complaints of inflexibility and insensitivity in the adoption and application of regulations of those institutions and programs by a central administrative office removed from direct involvement with institutional clients.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the current overall functions and staffing of the Department of Institutions to determine:

(1) the adequacy and necessity of institutional services presently provided;

(2) services not presently provided that may be considered necessary;

(3) alternative methods of delivering necessary institutional services, including but not limited to consolidation and reorganization of present functions and staff positions;

(4) whether the necessary functions of the central administrative office are being performed in the most efficient, effective, and responsive manner possible.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 21, 1981.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO ENACT AMENDATORY LEGISLATION TO RETURN TO STATES THE RIGHT TO REGULATE OR PARTICIPATE IN REGULATING MINES RELATING TO MINE SAFETY AND HEALTH STANDARDS.

WHEREAS, the Legislature recognizes the ongoing importance of the mining industry to Montana, as well as to the entire nation; and

WHEREAS, the existence of the small mine operator, who plays an important part in the mining industry, is endangered by the impact of the "Federal Mine Safety and Health Act of 1977" (P.L. 95-164); and

WHEREAS, the act defines a mine as any area of land from which any minerals are extracted, both on the surface and underground, including the lands, excavations, and other facilities used in the work of extracting such minerals, which definition not only covers the commonly thought of mining activities such as coal, silver, and molybdenum operations but also includes activities such as sand and gravel excavation; and

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WHEREAS, the act has caused a further erosion of basic states' rights by excluding any participation by a state in the regulation and inspection of mines relating to safety and health standards; and

WHEREAS, there are distinct differences in mining operations across the nation, which are best understood and regulated on a state level rather than the national level because national legislation is often inflexible or incompatible with state needs and conditions; and

WHEREAS, the right of a state to develop its own regulatory program and to perform its own inspections of mines relating to safety and health standards should be preserved; and

WHEREAS, mining industry accident statistics have shown significant improvement under cooperative programs with state agencies, private industry, and labor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to enact amendatory legislation that would return to states the right to regulate or participate in the regulation of mines relating to mine safety and health standards.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and to each member of Montana's Congressional Delegation.

Approved April 6, 1981.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING A STATE AIR QUALITY EMISSION STANDARD IN CONFLICT WITH ANOTHER STATE AIR QUALITY STANDARD.

WHEREAS, subsection (4) of section 75-2-203, MCA, allows the Board of Health and Environmental Sciences to adopt emission standards more stringent than federal emission standards only if the stricter state standards are "necessary in some localities in this state"; and

WHEREAS, in 1970 the Board of Health and Environmental Sciences adopted emission standards limiting fluoride and particulate emissions from existing primary aluminum reduction plants, which standards are designated as Rule 16.8.1420 of the Administrative Rules of Montana; and

WHEREAS, in 1976 the Board of Health and Environmental Sciences adopted as state standards the federal new source performance standards limiting fluoride and particulate emissions from new primary aluminum reduction plants, which standards are designated as Rule 16.8.1423 of the Administrative Rules of Montana; and

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WHEREAS, the state standards adopted prior to the state's adoption of the federal standards are more restrictive than the federal standards adopted by the state; and

WHEREAS, the more stringent state standards tend to limit the expansion and economic growth of the affected industry by requiring additional expenditures for control equipment that are unnecessary in that the federal standards are designed to protect human health and welfare; and

WHEREAS, because both standards are state standards, the state has now adopted two different emission standards for particulate and fluoride emissions for new and existing primary aluminum reduction plants.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state standards limiting the fluoride and particulate emissions from existing primary aluminum reduction plants and designated as Rule 16.8.1420 of the Administrative Rules of Montana are repealed.

BE IT FURTHER RESOLVED, that the Board of Health and Environmental Sciences is directed to proceed within 30 days to promulgate new standards. The Board shall adopt the terms and provisions of the federal new source performance standards for fluoride and particulate emissions from primary existing aluminum reduction plants as its standard for all primary aluminum reduction plants in this state.

Approved March 25, 1981.

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF STATE-OPERATED LABORATORY FACILITIES TO DETERMINE THE FEASIBILITY OF CONSOLIDATING CERTAIN STATE-OPERATED LABORATORY FACILITIES AND COORDINATING FUNCTIONS WITH THE VARIOUS PRIVATE, FEDERAL, AND LOCAL LABORATORY FACILITIES IN MONTANA.

WHEREAS, the Legislature finds that there are at least 10 major state-operated laboratory facilities located throughout the state; and

WHEREAS, many private, federal, or local laboratory facilities are also located throughout the state; and

WHEREAS, many functions are duplicated at two or more of these laboratory facilities; and

WHEREAS, it may be possible to consolidate laboratories and coordinate functions of the various facilities to reduce the overall cost of operation while still providing the same level of service.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That the governor form an appropriately constituted committee to study the feasibility of consolidating state-operated laboratory facilities and coordinating functions with private, federal, or local laboratories in Montana.

(2) That the committee include in its study the following:

(a) identification of existing laboratory facilities, capabilities, and needs;

(b) determination of the funding structure of state-operated laboratory facilities in Montana and in other states;

(c) consideration of the administrative structure of laboratory facilities in other states;

(d) consideration of the feasibility of consolidating various state-operated laboratory facilities and functions;

(e) consideration of the possibility of coordinating services rendered by state, federal, local, and private laboratory facilities.

(3) That the committee submit to the 48th Legislature a report of its findings, together with any proposed legislation it considers necessary to implement such findings.

Approved April 14, 1981.

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE BE ASSIGNED TO STUDY THE CHILD LABOR LAWS OF MONTANA.

WHEREAS, the Legislature recognizes that the children of Montana are Montana's most valuable resource and that all children must be protected from possible abuses in relation to child labor; and

WHEREAS, severe abuses can result when the state does not give proper protection to children who work in the labor market; and

WHEREAS, the present Montana child labor laws were originally passed in 1907; and

WHEREAS, there have been substantial changes in Montana's industrial society since the passage of the present Montana labor laws in 1907 and there has been substantial technological progress since that time; and

WHEREAS, the present child labor laws do not reflect the changes that have occurred in the labor market since 1907 and cannot be adequately applied to the present work environment; and

WHEREAS, the present child labor laws have limited application, exclude a substantial portion of the employers in Montana, and can lead to abuses because of these exclusions; and

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WHEREAS, there are substantial conflicts and inconsistencies between the present Montana child labor laws and federal laws concerning child labor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an interim committee be assigned to study Montana's child labor laws in relation to the present work environment and in relation to federal child labor laws and to report its findings and recommendations on proposed legislation to modernize the child labor laws of Montana to the 48th Legislature.

BE IT FURTHER RESOLVED, that in the course of this interim study that the issues also be studied of protection of employers and school districts from liability for events arising in the course of employment of young persons subject to child labor laws.

Approved April 14, 1981.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE RESPECTIVE BENEFITS OF INSTITUTIONAL CARE AND COMMUNITY CARE FOR RECIPIENTS OF SERVICES IN YOUTH PROGRAMS; DEVELOPMENTAL DISABILITIES PROGRAMS; AND MENTAL HEALTH, ALCOHOLISM, AND DRUG TREATMENT PROGRAMS AND OF THE FEASIBILITY OF REORGANIZATION OF FUNCTIONS PERFORMED ON BEHALF OF THE RECIPIENT GROUPS.

WHEREAS, Montana's first deinstitutionalization effort was the closure of Twin Bridges Children's Center in 1975 with the resulting movement of dependent children into community group homes and other services; and

WHEREAS, deinstitutionalization of residents of Warm Springs State Hospital and Boulder River School and Hospital started in 1974, resulting in a massive decrease in numbers of persons treated in those institutions as well as a dramatic increase in community programs developed to meet their needs; and

WHEREAS, both community and institutional programs for those suffering from alcohol and drug dependence have been developed in response to federal and state laws which have defined alcoholism as a disease and created sources of funds for treatment; and

WHEREAS, there has been a continuing controversy over the merits of institutional care versus community-based care; and

WHEREAS, four state departments share some of the responsibilities for services to youth, the developmentally disabled, the mentally ill, and the alcohol and drug dependent; and

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WHEREAS, decreasing federal funds available for such services require the legislature to make all possible administrative cost savings in order to continue those services which are most beneficial to the recipients.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee be assigned to study:

(1) the extent of the need for services to youth, the developmentally disabled, the mentally ill, and the drug dependent;

(2) the effectiveness of institutional programs and of community-based programs for persons in each of these groups;

(3) the cost of treatment within institutions and within community-based services;

(4) the effect on the employees of institutions and of community-based services of any changes recommended;

(5) alternatives to the existing administrative structure which would provide better service to each group, including combining certain functions within one department or combining some services into regional centers;

(6) the relationship of community private nonprofit service corporations to the state and ways to clarify duties and responsibilities; and

(7) alternative financing mechanisms which would allow for the most appropriate treatment to the individual whether in the institutions or in the community.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 21, 1981.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF COMMERCIAL TRANSPORTATION PROBLEMS IN MONTANA.

WHEREAS, Montana is a rural state with long distances between population and marketing centers; and

WHEREAS, agriculture, Montana's primary industry, is vitally dependent upon adequate transportation systems to move raw products to market; and

WHEREAS, the abandonment of the Milwaukee Railroad has had severe economic impact on all Montana industry; and

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WHEREAS, the Public Service Commission has allowed the Burlington Northern trucklines to discontinue intrastate service; and

WHEREAS, Montana motor carriers are tightly regulated under Montana law; and

WHEREAS, there is a trend toward deregulation of motor carriers, rail carriers, and air carriers at both the federal and state levels.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study commercial transportation problems in Montana.

(2) That the committee include in its study a consideration of at least the following:

(a) the effect of deregulation, by the federal government and by other states, of motor carriers and rail carriers on sparsely populated rural areas like Montana;

(b) reorganization of rates such that the more lucrative trunk routes are forced to assist the less lucrative spur routes into the sparsely populated areas; and

(c) involvement by the State of Montana in providing necessary transportation systems.

(3) That the committee submit to the 48th Legislature a report of its findings together with recommendations for legislation, if any, necessary to implement such findings.

Approved March 30, 1981.

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF REQUIRING THE BOARD OF INVESTMENTS TO INVEST A PORTION OF THE STATE INVESTMENT POOL IN THE ECONOMIC DEVELOPMENT OF MONTANA.

WHEREAS, the economic well-being of Montana citizens is enhanced by the availability of employment opportunities for all who wish to work; and

WHEREAS, Montana's economy depends on development of its agricultural and business potential and its natural resources, all of which require large infusions of capital; and

WHEREAS, Montana is geographically isolated from the concentrations of investment capital found in the urban centers of the nation; and

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WHEREAS, the state investment pool represents a potential source of capital that could significantly aid Montana's entrepreneurs in their efforts to build a healthy economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the feasibility of requiring the Board of Investments to invest a portion of the state investment money in the economic development of Montana.

(2) That the committee include in its study a consideration of at least the following:

(a) existing statutory requirements that the Board of Investments must meet in choosing suitable investments for state funds;

(b) any appropriate adjustment or revision of statutory requirements needed to permit more investment in Montana-based enterprises whenever reasonable; and

(c) policies of the Board of Investments relating to its investments.

(3) That the committee be composed as follows:

(a) two members of each political party from the House of Representatives to be selected by the leaders of the respective parties;

(b) two members of each political party from the Senate to be selected by the leaders of the respective parties; and

(c) two members qualified by reason of education and experience in investment and finance areas, to be selected by the Governor.

(4) That the nonlegislative members be paid and be reimbursed for costs and expenses in the same manner as provided for legislative members, subject to appropriation to the Legislative Council of sufficient funds for such purpose.

(5) That the committee submit to the 48th Legislature a report of its findings together with recommendations for legislation, if any, to implement such findings.

Approved April 11, 1981.

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA ARTS COUNCIL TO PROVIDE THE 48TH LEGISLATURE WITH A PROCESS FOR ESTABLISHING THE POSITION OF POET LAUREATE OF MONTANA.

WHEREAS, it is fitting and proper to honor outstanding Montana artists; and

WHEREAS, many states have found it fit to identify a state poet laureate; and

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WHEREAS, the Montana Arts Council consists of individuals from throughout the state having a background or interest in the arts which could be effectively used to suggest the duties of and criteria for choosing a Montana poet laureate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Arts Council is requested to recommend to the 48th Legislature:

(a) the duties and responsibilities of a poet laureate of the State of Montana; and

(b) a process for designating a poet laureate of the State of Montana that would provide criteria for identifying persons who have the qualifications to be considered for this great honor and that will assure that Montana's poet laureate will bring honor and respect to the State of Montana.

(2) That the Secretary of State send a copy of this resolution to the chairman of the Montana Arts Council.

Approved March 18, 1981.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests so as to maximize yield while protecting the resource for future generations; and

WHEREAS, proper forest management and use are necessary for the protection and conservation of other important resources such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two senators and two representatives, one from each party, to represent Montana on the Western States Legislative Forestry Task Force, which shall operate as a clearinghouse for opinion from all the various interests involved in the Western States forests and which shall include among its duties a report to the legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives shall send copies of this resolution to the presiding officers of the legislatures of Washington, Idaho, Oregon, Wyoming, Alaska, and California and to the Executive Director of the Western States Legislative Forestry Task Force.

Approved March 24, 1981.

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A JOINT COMMITTEE BE APPOINTED TO CONDUCT AN INTERIM STUDY OF THE TRANSPORTATION INDUSTRY IN MONTANA.

WHEREAS, a reliable, expeditious system of common carriers is essential to the well-being of all citizens of Montana; and

WHEREAS, the survival of the common carriers depends upon a schedule of tariffs sufficient to insure revenue adequate to provide reasonable earnings; and

WHEREAS, transportation is a major factor in the cost of production and in the prices Montana residents pay for goods; and

WHEREAS, the Public Service Commission has the duty to supervise and regulate the operations of common carriers, to establish tariffs, and to issue certificates of convenience and necessity for intrastate service.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the capability of the intrastate common carriers to serve reasonably the people of Montana, the tariffs necessary to provide adequate returns to the carriers, the ability of the people of Montana to pay the rates required by the carriers, the network of routes essential to serve all sections of the state, the

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functions of the Public Service Commission in regulating intrastate carriers, and the probable effect of deregulation on intrastate carriers.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 48th Legislature.

Approved March 30, 1981.

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FINANCING OF PUBLIC EDUCATION IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the State of Montana has an obligation to provide adequate educational opportunities for its citizens; and

WHEREAS, financing of public education is presently based on a complicated foundation program designed to provide an equitable and equalized financing structure for public education; and

WHEREAS, legal action is being considered to address and resolve the question of whether or not the school foundation program as currently funded properly meets the mandate for the funding of public education as stipulated in Article X, sections 1 and 3 of the Montana Constitution; and

WHEREAS, financing of public education is becoming more and more dependent on property taxation and voter approved mill levies because of the deficiency in the foundation program; and

WHEREAS, property taxpayers and voters in local communities are becoming increasingly reluctant to accept the burden of additional taxation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the revenue oversight committee be assigned to determine whether or not the school foundation program as currently structured and funded properly meets the mandate for the funding of public education as stipulated in Article X, sections 1 and 3 of the Montana Constitution. The study shall include consideration of ways in which the increasing pressure on local voted levies can be relieved.

(2) That the study include a consideration of the relationship between the basic educational program established in the standards for accreditation and the foundation program amount.

(3) That the committee submit to the 48th Legislature a report of its findings, together with recommendations for legislation, if any, necessary to implement such findings.

Approved April 27, 1981.

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HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES TO CALL ATTENTION TO THE PLIGHT OF PRISONERS OF WAR IN ANY DECLARATION CONCERNING VETERANS' DAY.

WHEREAS, hundreds of individuals, both military and civilian, have been taken as prisoners in time of war and have suffered for years at the hands of their captors;

WHEREAS, the recent events that brought freedom to the 52 American hostages remind all Americans of the necessity for a fresh recognition of the plight of prisoners of war, men missing in action, and their families;

WHEREAS, many in the medical and psychological professions are beginning to recognize a phenomenon of delayed shock syndrome in former prisoners in which pent-up fear, anguish, and frustration can lead to violent outbursts if not recognized and treated;

WHEREAS, all Americans owe a debt to those who suffered and may still suffer at the hands of their fellow man and to their families, a debt we need to be reminded of so that we take time to attend to their needs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the United States is urged, in any declaration concerning Veterans' Day, to call attention to former prisoners of war, those unaccounted for after past wars, and their families by asking that people place a red, white, and blue ribbon in every noticeable place on that day.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States and to the Montana Congressional Delegation.

Approved April 3, 1981.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO AMEND THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 TO DELETE CERTAIN PROVISIONS RELATING TO RECORDING AND ABANDONMENT OF MINING CLAIMS AND CERTAIN ENFORCEMENT PROVISIONS.

WHEREAS, subsection 303(c) of the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes enforcement personnel to carry firearms, make certain arrests without warrant, and search for and seize evidentiary items without warrant under certain circumstances; and

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WHEREAS, subsection 314(a)(1) of the FLPMA requires the filing of a notice of intent to hold a mining claim, an affidavit of assessment work performed thereon, or other detailed report as required by 30 U.S.C. 28-1, in the office where the location notice or certificate is recorded; and

WHEREAS, subsection 314(c) of the FLPMA states that the failure to file such instruments as required by subsection (a) shall be considered conclusively to constitute an abandonment of the mining claim or mill or tunnel site; and

WHEREAS, the Fourth Amendment of the Constitution of the United States provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and

WHEREAS, the Fifth Amendment of the Constitution of the United States provides that no person shall be deprived of life, liberty, or property without due process of law; and

WHEREAS, it is a longstanding principle of law that abandonment does not depend on rules or customs of mining but is largely, if not entirely, a matter of a locator's intention, which is to be determined from his acts and statements.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is most earnestly requested to amend the Federal Land Policy and Management Act of 1976 (Public Law 94-579) by deleting therefrom subsections 303(c), 314(a)(1), and 314(c).

BE IT FURTHER RESOLVED, that the Secretary of State shall send copies of this resolution to the President of the United States, Governor Ted Schwinden, and to each member of the Congress of the United States.

Approved March 30, 1981.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO SUPPORT THE SOVEREIGNTY OF THE STATE OF MONTANA.

WHEREAS, the 10th amendment of the United States Constitution guarantees the sovereignty of the states in all matters not specifically delegated to the Federal Government; and

WHEREAS, it is the right of the state to tax itself; and

WHEREAS, it is the right of the state to set rules and regulations for the common good of Montana's citizens; and

WHEREAS, it is the right of the state to determine land-use policies for those lands within its borders; and

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WHEREAS, it is the right of the state to manage, use, and retain ownership of the waters of the state; and

WHEREAS, these rights are threatened by actions of the Congress and the executive branch of the Federal Government; and

WHEREAS, the loss of these rights will seriously impair the well-being of the state and its people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That President Reagan and the members of the Montana Congressional Delegation are requested to seek all possible methods to guarantee the rights of the State of Montana as provided in the United States Constitution.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States and to Montana's Congressional Delegation.

Approved April 1, 1981.

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THAT THE GOVERNOR NEGOTIATE AN INTERSTATE COMPACT WITH THE STATE OF WASHINGTON AND OTHER INTERESTED WESTERN STATES TO PROVIDE FOR REGIONAL DISPOSAL FACILITIES FOR LOW-LEVEL RADIOACTIVE WASTES.

WHEREAS, the States of Washington, Oregon, and Idaho have negotiated and are considering in their present legislative sessions ratification of the Northwest Interstate Compact on Low-Level Radioactive Waste Management; and

WHEREAS, this compact would allow Montana to become a party by executive order or action of the Governor on a temporary basis until final adjournment of the 48th Session of the Montana Legislature or July 1, 1983, whichever occurs first.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, contingent upon the ratification by the State of Washington and one or more other interested states in the region, the Governor of Montana shall take appropriate executive action designating Montana as a party to this Compact on a temporary basis for the purpose of allowing continued disposal of Montana-generated low-level radioactive wastes at the Hanford, Washington, disposal site; and

BE IT FURTHER RESOLVED, that the Governor's action designating Montana as a temporary compact party expire on the date of final

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adjournment of the 48th Session of the Montana Legislature or July 1, 1983, whichever occurs first; and

BE IT FURTHER RESOLVED, that the Governor shall analyze the implications of Montana's long-term participation in the Northwest Interstate Compact on Low-Level Radioactive Waste Management and report his findings to the Legislature on or before October 1, 1982; and

BE IT FURTHER RESOLVED, that the Governor shall present the Northwest Interstate Compact on Low-Level Radioactive Waste Management to the 48th Session of the Montana Legislature for its review and ratification if the Governor considers such presentation appropriate.

Approved April 14, 1981.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE CONTRIBUTIONS MADE TO MONTANA BY CHARLES MONROE BAIR, A PIONEER MONTANA SHEEPMAN, AND DIRECTING THE MONTANA HISTORICAL SOCIETY TO COOPERATE WITH THE BAIR FAMILY TO PRESERVE THE COLLECTION OF ANTIQUES AND ARTIFACTS COLLECTED BY THE FAMILY OF CHARLES M. BAIR.

WHEREAS, Charles M. Bair was a pioneer, a railroad employee, a gold miner, a superb horseman, a car-racing enthusiast, a developer of irrigation, a banker, an oil developer, and a developer of coal mining, in addition to being the sheepman with North America's largest sheep business; and

WHEREAS, Charles Bair's character and tremendous range of interests were reflected by the variety of his friends and associates, from the humblest herder to the powerful and wealthy, including Indian Chief Plenty Coups, railroad tycoon James Hill, Presidents McKinley, Theodore Roosevelt, Taft, Coolidge, and Hoover, movie greats Will Rogers, William Hart, and Tom Mix, and artists Charles Russell, Joseph Sharp, and Will James; and

WHEREAS, the Bair family history has spanned the full range of Montana history, from territorial days to modern times; and

WHEREAS, the Bair family enterprises have encompassed Montana's basic economic structure, which includes livestock, finance, and mining; and

WHEREAS, the achievements of Charles Bair are reflected in his mansion in central Montana; and

WHEREAS, this mansion is a repository for carefully selected Indian artifacts and works of art by Western artists and is furnished with the finest European and early American antiques; and

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WHEREAS, this collection represents a unique and irreplaceable resource that reflects an important part of Montana's heritage; and

WHEREAS, through the generosity of the late Marguerite Bair Lamb, a gift of an interest in the Bair mansion has been made to the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Historical Society cooperate with the Bair family in every possible way to preserve and perpetuate the art and antiques assembled by the Bair family.

(2) That the Montana Historical Society make a report to the 1983 Legislature on plans and recommendations that will preserve and perpetuate the Bair collection for all Montanans.

(3) That copies of this resolution be sent by the Secretary of State to Miss Alberta Bair, to the members of the Board of Trustees of the Montana Historical Society, and to the publisher of each newspaper in the state.

Approved March 28, 1981.

HOUSE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE FINANCE COMMITTEE BE ASSIGNED TO STUDY THE LAWS RELATING TO POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS FOR THE PURPOSE OF GENERALLY CLARIFYING, UPDATING, SUPPLEMENTING, AND REVISING SUCH LAWS.

WHEREAS, in 1979 the Legislature clarified postsecondary vocational-technical center governance; and

WHEREAS, such clarification was not accompanied by an enactment of a comprehensive body of law dealing with postsecondary vocational-technical centers; and

WHEREAS, there is no clearly applicable and adequately comprehensive body of law relating to postsecondary vocational-technical centers; and

WHEREAS, the method of financing postsecondary vocational-technical centers is in need of review; and

WHEREAS, a legislative study of school and other appropriate laws relating to postsecondary vocational-technical centers that would make recommendations for the general clarification, updating, supplementation, and revision of such laws would be useful to the Legislature and those responsible for the operation of postsecondary vocational-technical center operation.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative finance committee be assigned to study the statutory provisions relating to postsecondary vocational-technical centers, including the method of financing, to prepare recommendations for the general clarification, updating, supplementation, and revision of such provisions, and to report its findings and recommendations to the regular session of the 48th Legislature.

Approved April 23, 1981.

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF AN INTERIM COMMITTEE TO STUDY THE ORGANIZATION, EFFECTIVE UTILIZATION OF PERSONNEL, BUDGETARY CONSTRAINTS, AND LAND ACQUISITION POLICY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS.

WHEREAS, there is significant legislative and public interest in the operation of the Department of Fish, Wildlife, and Parks; and

WHEREAS, all Montanans recognize the importance of maintaining and improving the quality of fish, wildlife, and park management; and

WHEREAS, all Department management objectives should be viewed in terms of their cost effectiveness.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an interim committee be assigned to review the operation and management objectives of the Department of Fish, Wildlife, and Parks.

BE IT FURTHER RESOLVED, that the committee include representatives of the seven geographic regions served by the Department.

BE IT FURTHER RESOLVED, that the committee:

(1) review the duties of the Director to make certain that they are consistent with the need to maintain and improve the quality and cost effectiveness of Department operations;

(2) review the duties of all Department specialists to make certain that they provide for the orderly execution of Department management objectives;

(3) review the Department's staffing policies to make certain that:

(a) needed management and administrative specialists are on staff;

(b) they are working within the scope of the Department's management objectives; and

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(c) the Department is making optimum use of the abilities of its management and administrative specialists; and

(4) review the Department's land acquisition policies to make certain that the policies:

(a) insure maximum public access to state fish, wildlife, and park resources;

(b) insure that the state's fish, wildlife, and park resources are managed for the benefit of current and future generations of Montanans; and

(c) insure that available public funds are properly used for maintenance of all acquired lands.

BE IT FURTHER RESOLVED, that the committee prepare a report of its findings and conclusions, together with its recommendations, and deliver the report to the 1983 Legislature no later than January 10, 1983.

Approved April 10, 1981.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE BE ASSIGNED TO CONDUCT AN INTERIM STUDY TO DETERMINE HOW TO IMPROVE THE ECONOMIC ENVIRONMENT IN MONTANA.

WHEREAS, more than 600 Montana businesses have gone bankrupt in the past 5 years while many others have closed their doors; and

WHEREAS, Montana has 20,000 workers unemployed; and

WHEREAS, many high school and college graduates are unable to find employment in Montana; and

WHEREAS, many business opportunities do not exist in Montana because of the lack of knowledge of sound business economics; and

WHEREAS, Montana has recently suffered economic setbacks in the closing of the Anaconda facilities in Great Falls and Anaconda, the bankruptcy of the Milwaukee Railroad, the closing of the Evans Plant in Missoula, and the reduction of personnel and facilities at Malmstrom Air Force Base at Great Falls; and

WHEREAS, the Select Committee on Economic Problems has performed a valuable service in pinpointing problem areas in Montana's economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That an appropriate interim committee be assigned to study how to improve the economic environment in Montana and continue along the same lines as those forged by the Select Committee on Economic Problems and develop positive measures that can be taken to encourage a healthy economy in Montana. The specific purposes and responsibilities of the interim committee shall be to:

(1) determine if Montanans understand free enterprise concepts and functions as they apply to Montana and the employment possibilities in Montana;

(2) determine how students in Montana can be taught the values of free enterprise in the present marketing environment of the state;

(3) review the economic climate of Montana to determine how more jobs could be created;

(4) analyze the present tax system in application to business in Montana and determine whether tax incentives or methods of negative taxation will attract industry to Montana;

(5) analyze investment and loan programs to aid Montanans through the free enterprise system;

(6) develop practical guidelines to assist Legislators to distinguish between necessary protection of consumers, the environment, and businesses and overregulation of business entities;

(7) suggest deregulation or regulation procedures to improve Montana's economy and the impact of such deregulation or regulation on Montana citizens; and

(8) make use of existing reports and studies whenever possible.

BE IT FURTHER RESOLVED, that the interim committee exercise, directly or indirectly, all powers necessary to gather all information reasonably proper to fulfill its obligations to determine how best the free market system can be developed in Montana.

BE IT FURTHER RESOLVED, that the interim committee report its findings to the 48th Legislature with recommendations for a program of economic development and encouragement of the free enterprise system.

Approved April 13, 1981.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SCHOOL TEACHER TENURE LAWS AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, there have been several bills introduced in the 47th Legislature to modify present law on teacher tenure; and

WHEREAS, there is at the present time a recognition among legislators, teachers, administrators, and school district trustees in the state that this

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is an appropriate time for a comprehensive examination of teacher tenure laws; and

WHEREAS, the present laws on teacher tenure in some respects fail to harmonize with actual fiscal restraints and conditions of school districts and with collective bargaining practices and may in some instances be applied inequitably, causing hardship to some teachers and granting unwarranted job security to others; and

WHEREAS, as was demonstrated during hearings on teacher tenure bills introduced in the current session, the subject is complex and controversial in nature and thus was not amenable to a solution during the session; and

WHEREAS, because alterations in existing tenure law could have significant and long lasting personal and fiscal effects on both teachers and school districts, there is a real need to study teacher tenure through exhaustive public hearings and deliberations that would lead to proposed laws governing the employer-employee relationship in Montana's public schools that represent an equitable accommodation among all concerned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study present teacher tenure laws, specifically examining:

(a) the present system of requiring a certain term of years for tenure qualification;

(b) the substantive and procedural scope of teacher tenure provisions and the advantages and disadvantages to teachers, school districts, and the community;

(c) the fiscal restraints, uncertainties, and timetables that affect school districts in the application of tenure laws;

(d) collective bargaining practices related to tenure; and

(e) inequities in present tenure laws that may cause hardship to individual teachers, school districts, administrators, and to the community at large.

(2) That the committee is urged to study and carefully consider due process and collective bargaining alternatives to present teacher tenure laws.

(3) That the committee report its findings to the 48th Legislature together with recommendations for legislation, if any, necessary to implement such findings.

Approved April 27, 1981.

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HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE METHODS THAT MIGHT BE USED TO TERMINATE ADMINISTRATIVE RULES RELATING TO THE STATE'S ENVIRONMENT AND NATURAL RESOURCES.

WHEREAS, ever-increasing numbers of administrative rules have been adopted by most executive agencies; and

WHEREAS, those agencies with administrative and regulatory duties relating to the natural environment and natural resources have been among the agencies adopting a proliferation of administrative rules; and

WHEREAS, the wise use and regulation of the state's environment and natural resources are important priorities to the Legislature; and

WHEREAS, other states have adopted laws providing for the termination or "sunset" of certain administrative rules; and

WHEREAS, the use, management, and regulation of the state's environment and natural resources may well benefit from a "sunset" type of review of the administrative rules of those agencies with duties relating to the environment and natural resources; and

WHEREAS, the current laws requiring legislative review by the Legislative Audit Committee do not put sufficient emphasis on the review of administrative rules adopted by those executive agencies with duties relating to the management of the environment and natural resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the procedures and methods that might be used to terminate or replace, or both, the rules that, in the judgment of the committee, affect the environment and natural resources of this state. In conducting the study, the committee shall review any laws adopted by other states, and the administration of those laws, providing for "sunset" termination of agency regulations and estimate the potential costs and benefits to this state of adopting laws requiring "sunset" termination of rules affecting the environment and natural resources of this state.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 48th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 21, 1981.

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HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL PROTECTION AGENCY TO GRANT MONTANA AND OTHER WESTERN STATES ADDITIONAL TIME TO RESPOND TO THE ISSUES RAISED IN THE STRYCHNINE POSITION DOCUMENT NO. ⅔ RECENTLY RELEASED BY THAT AGENCY; AND FURTHER REQUESTING PRESIDENT REAGAN AND THE UNITED STATES SENATE AND HOUSE OF REPRESENTATIVES TO SUPPORT THIS RESOLUTION.

WHEREAS, the Environmental Protection Agency (EPA) issued the RPAR (Rebuttable Presumption Against Registration) notice for all outdoor aboveground uses of strychnine for field rodent control on December 1, 1976 (41 FR 52810); and

WHEREAS, EPA has taken nearly 4 years to review the existing data on strychnine usage in the United States; and

WHEREAS, the alternative field rodenticides proposed by EPA are either generally not available (1080 - sodium monofluoroacetate); generally not effective (zinc phosphide); generally not economical (gas cartridges and fumigants); or generally not economical or not adequately researched, or both (anticoagulants); and

WHEREAS, Montana and several other Western States believe that the recommendations proposed by EPA in Position Document No. ⅔ are not justified by the data reviewed and used in reaching them; and

WHEREAS, Montana and other Western States presently do not have the available manpower and money needed to refute the conclusions of EPA set forth in Position Document No. ⅔; and

WHEREAS, the response of different field rodent species to different environmental conditions has not been adequately addressed or researched; and

WHEREAS, EPA concludes that no macroeconomic impacts would be anticipated as a result of cancellation of strychnine for aboveground rodent control; and

WHEREAS, this conclusion is based upon estimates of estimates and does not consider impacts to individual agricultural producers or to aggregate agricultural communities; and

WHEREAS, the few economic impact studies conducted by Western States indicate that significant economic agricultural impacts do occur to individual agriculturalists and to agricultural communities; and

WHEREAS, considering the necessity to conduct studies under varying environmental conditions, considering all economically damaging rodent species present in the Western States, and considering the time necessary

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to plan and conduct meaningful studies, a 1-year comment period prior to a final decision by EPA is insufficient.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Protection Agency give Montana and other Western States until September 1984 to provide new and additional data to rebut the conclusions of Strychnine Position Document No. 2⅔.

BE IT FURTHER RESOLVED, that all current aboveground registrations of strychnine for field rodent control continue unchanged during this period.

BE IT FURTHER RESOLVED, that the states and EPA cooperate in making available to each other for review and comment all information that they collect and studies that they propose.

BE IT FURTHER RESOLVED, that the President of the United States and members of the United States Senate and House of Representatives are urgently requested to support this resolution.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Administrator of the Environmental Protection Agency, the Secretary of the Department of the Interior, and the Secretary of the Department of Agriculture and to the Governors and the Congressional Delegations from Montana, Idaho, Washington, Oregon, California, Nevada, Utah, New Mexico, Arizona, Texas, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

Approved April 14, 1981.

HOUSE JOINT RESOLUTION NO. 55

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PROVISIONS GOVERNING MOTOR VEHICLE LIABILITY INSURANCE IN MONTANA.

WHEREAS, Montana law now requires liability insurance protection as a condition of registration and operation of a motor vehicle in the state; and

WHEREAS, Montana law prescribes those matters that a motor vehicle liability policy must address; and

WHEREAS, motor vehicle liability policies insure, with respect to the named insured, vehicles designated in the policy; and

WHEREAS, motor vehicle insurance policies also insure persons other than the named insured with respect to designated vehicles; and

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WHEREAS, motor vehicle insurance policies insure the named insured with respect to liabilities arising from the operation of motor vehicles not owned by him but which he operates as if they were his insured vehicles; and

WHEREAS, the statute requiring the maintenance of liability protection together with standard industry practice and state law with regard to the form and content of the liability insurance policy have created a situation in which insurance companies are able to receive insurance premium payments for coverage of vehicles that are only occasionally exposed to the risk against which they are insured; and

WHEREAS, insurance rates are based on the number of vehicles insured rather than the risk exposure represented by those vehicles; and

WHEREAS, the state has a duty to assure that windfall profits are not bestowed on the insurance industry as a consequence of the effort to protect the state's citizenry from the irresponsible motorist.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the regulation of motor vehicle liability protection in Montana.

(2) That the committee include in its study a consideration of at least the following:

(a) the rate structures for motor vehicle liability insurance offered for sale in Montana;

(b) the feasibility of requiring policies to be offered that would insure against the liability of the operator of any vehicle regardless of ownership and that coverage be a mandatory condition precedent to the issuance of an operator's license in lieu of coverage being based upon the vehicle or its ownership; and

(c) whether state laws now adequately promote adequate protection of citizens from irresponsible motorists at a reasonable cost for the protection provided.

(3) That the committee submit a report of its findings under paragraph (2) and any other findings together with its recommendations to the 48th Legislature.

Approved April 22, 1981.

HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A COMPREHENSIVE INTERIM STUDY OF THE ADMINISTRATION AND OPERATION OF THE DEPARTMENT OF HIGHWAYS AND THE HIGHWAY COMMISSION.

WHEREAS, the administration of highway affairs has become a matter of major public importance involving vast sums of money, the development of commerce and resources, the employment of great numbers of people,

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the promotion of recreation, and the welfare of every citizen of the state; and

WHEREAS, the operation of highway affairs demands the highest order of business and technical administration, accompanied by continuity of sound long-range highway policies, and an organization attracting the services of qualified talented administrators and meriting the confidence of the people; and

WHEREAS, the Department of Highways has no formal planning process for incorporating long- and short-range goals; and

WHEREAS, there is a lack of project coordination between Department programs; and

WHEREAS, the Department has shown an inability to maintain strict completion dates on projects; and

WHEREAS, the Department has no contingency planning process for project cost overruns, which causes the state to lose large sums of interest income on federal matching funds that would be available, as well as causing the use of state funds; and

WHEREAS, the dual role of the Department and the Highway Commission in planning and letting bids on projects allows each entity to shield the other from criticism so that no strict public accountability exists; and

WHEREAS, the roads of the state are in a generally deplorable condition; and

WHEREAS, it does not appear that Montana's road system will ever be completed and maintained in an efficient and timely manner; and

WHEREAS, since the Legislature is responsible to the electorate for the expenditure of public funds, it is particularly incumbent upon the Legislature to carefully examine a department of this size; and

WHEREAS, only after a comprehensive study of the administration and operation of the Department of Highways and the Highway Commission has been conducted in conjunction with performance audits requested by the Highways and Transportation Committee of the Montana House of Representatives can the Legislature reach sound decisions on whether the Department and Commission are effectively and prudently administering programs and expending public funds so that the people receive the highest value for their tax dollars; and

WHEREAS, any study of the Department and Commission would be incomplete unless a legislative interim study committee had studied their functions and had studied the mechanisms used by other states and considered methods to improve the functioning of the Department and Commission in order to make them more efficient and responsive to the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to conduct a comprehensive study of the administration and operation of the Department

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of Highways and the Highway Commission in areas in which performance audits are not conducted and submit a written report of its findings, together with its recommendations, to the 48th Legislature.

Approved April 22, 1981.

HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE EMPLOYMENT SECURITY DIVISION TO LEASE OR PURCHASE NECESSARY OFFICE SPACE IN BOZEMAN AT THE LEAST POSSIBLE COST CONSISTENT WITH ITS NEEDS AND TO SELL THE EXPENSIVE LAND WHICH IT HAS ALREADY PURCHASED.

WHEREAS, Montana citizens, because of chronic inflation, the economic slowdown, and a growing tax burden, are facing a period of economic austerity; and

WHEREAS, in March 1979, the Montana Employment Security Division purchased one of the most expensive commercial building sites in Bozeman, located at 19th Avenue and Main Street; and

WHEREAS, the Employment Security Division intends to construct an expensive office building at this site; and

WHEREAS, these actions will result in such property being taken off the property tax rolls, with an ensuing loss of local property taxes amounting to as much as $15,000 annually; and

WHEREAS, there is much commercial space available for lease or sale in Bozeman that would cost the Employment Security Division substantially less; and

WHEREAS, Montanans rightfully expect their government to be fiscally prudent and responsible.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Employment Security Division is strongly urged to cease its planning and work on the Bozeman construction project and to sell the acquired land back to the private sector in an orderly manner.

BE IT FURTHER RESOLVED, that the Employment Security Division is strongly urged to lease or purchase its office space at the least possible cost consistent with its needs.

Approved April 22, 1981.

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HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING CALGARY, ALBERTA'S CANDIDACY TO HOST THE 1988 WINTER OLYMPICS.

WHEREAS, the citizens of Montana have enjoyed the greatest of friendship with their northern neighbors in the provinces of Canada; and

WHEREAS, Calgary, Alberta, is a candidate to host the 1988 Winter Olympics; and

WHEREAS, the Legislature, recognizing the magnitude of such an undertaking, wishes to express its support and offer its encouragement for the reasons stated herein; and

WHEREAS, the State of Montana and the Province of Alberta share the Rocky Mountains, a range of mountains providing excellent, stable snow conditions, slopes of varied length and steepness, and broad valley floors affording excellent conditions and terrain for Alpine and Nordic ski competitions; and

WHEREAS, the Legislature recognizes that prior to, during, and following the 1988 Winter Olympics, were they to be held in Calgary, competitors, officials, aficionados, and tourists, Montanans among them, would travel to the area to examine it, to train, to compete, to learn from watching, and to enjoy by watching; and

WHEREAS, a tremendous opportunity would exist for Montana to offer its Alpine and Nordic skiing and skating facilities for pre-Olympic and post-Olympic competitions; and

WHEREAS, the State of Montana and the Province of Alberta have established a mutually beneficial record of cooperation in tourism, the attractions of each providing spillover grounds for the other.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature, by and for the people of Montana, supports and encourages Calgary, Alberta, in its candidacy to host the 1988 Winter Olympics.

(2) That the Legislature respectfully urges the United States Olympic Committee and its delegates to the International Olympic Committee to endorse that candidacy.

(3) That the Legislature respectfully informs the International Olympic Committee of this state's support for the candidacy of Calgary, Alberta.

(4) That copies of this resolution be sent by the Secretary of State to: the Premier of the Provincial Government of Alberta, the Mayor of

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Calgary, Alberta, the President of the Calgary Olympic Development Association, the International Olympic Committee, and the United States Olympic Committee.

Approved April 21, 1981.

HOUSE JOINT RESOLUTION NO. 62

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF A SELECT COMMITTEE ON INDIAN AFFAIRS.

WHEREAS, there are seven Indian reservations and numerous landless Indians in Montana; and

WHEREAS, the various tribes have treaties with the United States that are subject to continual interpretation; and

WHEREAS, extremely complex jurisdictional, social, political, and philosophical questions arise in virtually all subject areas, including law enforcement, pollution control, natural resources, game management, health, social services, education, and taxation which, in turn, produce tension and conflict in tribal/state and Indian/non-Indian relations; and

WHEREAS, Congress, as the ultimate authority on relations with the Indian tribes, has not been able to act in a decisive manner to resolve these questions and is unlikely to do so in the foreseeable future; and

WHEREAS, jurisdictional litigation on a case-by-case basis is expensive to the state, tribes, and private parties; and

WHEREAS, the jurisdictional, social, and philosophical problems between Indians and non-Indians are historical and cannot be expected to dissipate quickly; and

WHEREAS, the non-Indian people of Montana find it is to their benefit to have a cooperative and communicative liaison with the Indian people in Montana; and

WHEREAS, the Indian people in Montana have indicated it is also to their benefit to have a legislative committee with which to maintain such a cooperative and communicative liaison.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the Senate and the Speaker of the House appoint four members of the Senate and four members of the House, equally bipartisan, to serve on a select legislative committee on Indian affairs.

BE IT FURTHER RESOLVED, that the committee seek opinions of and information from Indian tribes, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations.

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BE IT FURTHER RESOLVED, that the committee hold hearings to promote better understanding between the tribes and public agencies and to improve the Indian peoples' knowledge of the structure of state agencies and the legislative process.

BE IT FURTHER RESOLVED, that the committee encourage and foster participation from Indian people at its meetings.

BE IT FURTHER RESOLVED, that the committee act as an available conduit for the Indian people to the Legislature.

BE IT FURTHER RESOLVED, that the committee encourage tribal/state and tribal/local government cooperation and otherwise promote amicable Indian/non-Indian relations.

BE IT FURTHER RESOLVED, that the committee keep informed of cooperative agreements being negotiated and entered into through the mechanism provided for in House Bill 25 or otherwise.

BE IT FURTHER RESOLVED, that the Legislative Council provide staff to assist the committee.

BE IT FURTHER RESOLVED, that the committee report its activities, findings, recommendations, and any proposed legislation to the 48th Legislature.

Approved April 21, 1981.

HOUSE JOINT RESOLUTION NO. 63

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE STATE PROCUREMENT SYSTEM.

WHEREAS, the State of Montana is a major purchaser of goods and services; and

WHEREAS, expenditures by the state for supplies, services, and construction continue to grow; and

WHEREAS, the responsibility for purchasing certain goods and services for the operation of state government, such as construction and consulting services, remains fragmented throughout agencies within the executive branch; and

WHEREAS, it is in the public interest for the Montana Legislature to consider a centralized, uniform procurement system for state government; and

WHEREAS, a centralized system may streamline current purchasing laws and procedures, ensure fair and equitable treatment of all persons involved in the state procurement process, provide increased economy in purchasing activities, foster effective, broadly based competition within the

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free enterprise system, and provide safeguards for maintaining a procurement system of high quality and integrity.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the current state procurement system and explore the benefits and liabilities of implementing a centralized procurement system for the State of Montana.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations, including recommendations for appropriate remedial legislation, to the 48th Legislature.

Approved April 21.

HOUSE JOINT RESOLUTION NO. 64

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO REQUEST AN INTERIM STUDY OF ALL ASPECTS OF MONTANA'S LAWS RELATING TO EMINENT DOMAIN.

WHEREAS, "eminent domain" is defined in 70-30-101, MCA, as "the right of the state to take private property for public use"; and

WHEREAS, the application of eminent domain is a necessary function of the state in order to promote the general welfare and provide for the public good; and

WHEREAS, the authority of the sovereign state to take private property for public use raises fundamental questions about the appropriate balance between necessary public uses and the rights of private property owners; and

WHEREAS, Montana statutes grant the power of eminent domain to private interests under certain circumstances; and

WHEREAS, the application of eminent domain is increasingly jeopardizing the rights of private landowners and the preservation of agricultural land; and

WHEREAS, the potential for serious conflict is increasing between those with private property interests and those who might use the power of eminent domain; and

WHEREAS, private landowners are concerned about the continued viability of their agricultural operations as sections of their land increasingly are taken through eminent domain proceedings; and

WHEREAS, private landowners and condemners generally are concerned about the overall process used in the taking of land by means of eminent domain.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study all aspects of Montana's laws regarding eminent domain. Such a study shall include but not be limited to an analysis of:

(1) what constitutes an appropriate public use;

(2) the criteria for assessing compensation to landowners;

(3) the method of payment to landowners;

(4) what constitutes an appropriate compensation for the conduct of surveys on private land;

(5) the overall procedure used for exercising eminent domain;

(6) alternatives for providing a process for notifying landowners of their rights;

(7) the factors considered in determining the highest and best use of the land in an eminent domain proceeding;

(8) the possibility of limiting, expanding, or eliminating the use of eminent domain in certain instances;

(9) the desirability of compensating landowners for the increase in operating costs incurred when certain land is removed from their control;

(10) generally what is and what should be compensable under the laws of eminent domain;

(11) the feasibility of establishing annual payments with an option for renegotiation of the payments as the value of the land changes;

(12) the relationship between the laws of eminent domain, the Montana Environmental Policy Act, and the Montana Major Facility Siting Act; and

(13) the advantages and disadvantages of granting the power of eminent domain for a project before all necessary permits and other legal proceedings have been obtained and completed.

BE IT FURTHER RESOLVED, that the committee report its activities, findings, and recommendations to the 48th Legislature.

Approved April 22, 1981.

HOUSE JOINT RESOLUTION NO. 65

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE BE ASSIGNED TO CONDUCT AN INTERIM STUDY OF HOW TO MITIGATE ECONOMIC DISTRESS TO A COMMUNITY CAUSED BY A DISLOCATION OF THE COMMUNITY'S PRIMARY INDUSTRY.

WHEREAS, Montana has recently suffered from the closure of primary products plants in the timber and metals industries, from droughts affecting agriculture and livestock production, and from gas shortages and an economic slump affecting tourism; and

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WHEREAS, such dislocations have a profound effect on all aspects of the communities involved and on the state as a whole because Montana's large area and small population create a situation in which many communities are virtually dependent on a single primary industry; and

WHEREAS, the industries upon which Montana's communities depend, including agriculture, forest products, minerals, and tourism, are in some degree affected by the current slump in the national economy, there is no immediate prospect for a dramatic economic recovery, and until such a recovery occurs, all facets of Montana's economy are vulnerable; and

WHEREAS, the impact of such distress on a community's primary economic base affects the workers who have lost their source of livelihood; all businesses in the community that suffer or are forced to close; the resultant loss of tax base from industry closure, worker departure, and business shutdown; school districts and local government revenues; and bond obligations; and

WHEREAS, local economic distress causes a statewide impact because of increased needs for social services and unemployment compensation, loss of wage and business income from income tax collections, and the eventual loss of Montana citizens to other states in order to seek employment; and

WHEREAS, the policy of this state should not be to simply react to such economic disasters after they occur but to recognize and plan for the very real possibility that exists in every Montana community for such an event, since there is little hope for large-scale effective assistance from the federal government; and

WHEREAS, a carefully formulated policy designed to provide quick and effective relief to communities suffering impairment of a primary industrial resource is a requirement of the future, and such a policy should be comprised of quick, effective measures to avoid costly after-the-fact programs and measures and should promote a healthy business climate in the state while protecting the needs of workers, small businesses, agricultural producers, and government entities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study methods of avoiding economic distress to communities caused by dislocation of a primary industry, specifically addressing:

(a) what identifiable incentives or disincentives that are amenable to legislative action affect such industries in the state;

(b) methods for timely identification of trends that may cause future dislocations in the various sectors of Montana's economy;

(c) specific actions that may be taken by state government, through the use or modification of existing programs, to lessen hardships on workers, small businesses, agricultural producers, and government entities; and

(d) alternatives, including novel approaches, that may provide long-term help for the various sectors of the economy by exploring the

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long-term financial needs of primary industries, new markets for existing products, alternative products for existing industries, and similar ideas.

(2) That the committee submit to the 48th Legislature a report of its findings, together with its recommendations for legislation, if any, necessary to implement such findings.

Approved April 22, 1981.

HOUSE JOINT RESOLUTION NO. 66

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE BE ASSIGNED TO DETERMINE THE MOST EFFECTIVE MEANS OF RESPONDING TO SOCIAL AND ECONOMIC IMPACTS RESULTING FROM THE INCREASED DEVELOPMENT OF HARD-ROCK MINERALS.

WHEREAS, several major mining companies have recently announced plans to proceed with large-scale development of hard-rock minerals; and

WHEREAS, these developments will provide new jobs in the mining operation and in associated industries and businesses, thus providing economic benefits to certain communities; and

WHEREAS, the influx of people resulting from the large-scale development of minerals also places a burden on the local taxpayer as the demand for state and local government facilities and services increases; and

WHEREAS, there is a significant lag time between the time when impacts occur and when additional tax revenue is available as a result of the increased tax base; and

WHEREAS, certain social and economic impacts resulting from large-scale mineral development may be experienced by communities in whose jurisdiction the mine is not located and who cannot expect the future benefit of an increased tax base; and

WHEREAS, the closure of a large-scale mineral development also provides substantial social and economic impacts to communities that become dependent on the jobs the industry provides; and

WHEREAS, the Legislature, recognizing the need to provide a means for communities affected by large-scale mineral development to mitigate those impacts, has considered many bills proposing different procedures for accomplishing that goal; and

WHEREAS, additional study and evaluation of these alternatives is necessary to arrive at a fair and reasonable means of providing for local impact while helping to continue the economic viability of large-scale mineral development and the benefits that it provides to state and local economies.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate joint interim committee be assigned to study the following issues relating to increased hard-rock mineral development in this state:

(a) alternatives for most effectively meeting the increased capital and operating costs to affected local governments in the initial stages of the development and how these measures will be funded;

(b) procedures for dealing with cumulative and ongoing impacts resulting from large-scale mineral development coupled with development of other resources or with multiple-mineral developments;

(c) a means of resolving how impacts will be fairly and accurately determined;

(d) whether existing statutory provisions for prepayment of property taxes is an effective means of dealing with impacts;

(e) whether the state should receive additional revenue from large-scale mineral development through severance taxes or other sources;

(f) the time frame in which planning for and meeting impacts will occur;

(g) the most effective vehicle for administering, overseeing, and enforcing the program for meeting impacts; and

(h) alternatives for most effectively meeting any impacts experienced with the closure of a large-scale mineral development.

(2) That the committee shall consult with representatives of the hard-rock mining industry, local governments, appropriate state agencies, and other interested citizens in conducting the study and developing recommendations.

(3) That the committee submit to the 48th Legislature a report of its findings, together with recommendations for providing the most effective means of responding to social and economic impacts resulting from the increased development of hard-rock minerals.

Approved April 27, 1981.

HOUSE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SAFETY PROBLEMS OF MONTANA AIRPORTS AND THE AMOUNTS AND SOURCES OF FUNDING NEEDED TO CORRECT THE PROBLEMS.

WHEREAS, inadequate funding has not allowed Montana to keep pace with the increasing demands of the state's air transportation system or to even maintain and protect the existing investment in the facilities we have; and

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WHEREAS, the problems of development and maintenance of the state's air transportation system continue to grow worse and are seriously compromising the safety guarantees assumed by the air traveling public of the State of Montana; and

WHEREAS, even with assistance that has been provided in the past through the Federal Airport Development Aid Program, the role of state government in aiding many Montana communities has been critical, and now that this federal assistance is in jeopardy, the state's role becomes even more vital.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the problems of poor maintenance, lack of modernization, and safety risks associated with the air transportation system in the State of Montana as well as the underlying funding problems associated with these situations.

(2) That the committee include in its study a consideration of at least the following:

(a) the extent of deterioration and obsolescence of Montana airports and air safety systems, including runway and taxiway pavement conditions, runway approach protection, land-use protection around airports, instrument approach systems, and crash fire rescue provisions;

(b) the accuracy, efficiency, and effectiveness of the current state aviation fuel tax collection process, especially as that process is related to aviation fuels transported into Montana;

(c) whether and how Montana ought to be integrated into the National Air Transportation System and whether and how Montana's Airport System Plan might be effectively integrated into the National Airport System Plan;

(d) a comparison of other states' policies and involvement in funding airport and airways systems to include an evaluation of airline and general aviation fuel costs, including taxes;

(e) an evaluation of the overall funding scheme supporting airport maintenance, improvement, and safety to determine whether existing revenue sources are adequate to meet existing and future needs and whether any steps should be taken to make the existing system more effective or what additional sources of funding should be used to meet these needs.

(3) That the committee submit to the 48th Legislature a report of its findings together with recommendations for legislation. The report should include committee findings with regard to each of the items listed above.

Approved April 22, 1981.

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HOUSE JOINT RESOLUTION NO. 68

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES RELATING TO VOTES ON BILLS REQUIRING MORE THAN A MAJORITY VOTE.

WHEREAS, questions have arisen concerning whether or not the vote on concurrence in amendments of the other house is the vote by which the originating house adopts a measure and thus the vote to be counted when determining whether or not a specified vote requirement of more than a majority has been met.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That there is added to Joint Rule 6-18 the following: "If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in the house of origin. The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast."

(2) That there is added to Joint Rule 7-10 the following: "If a conference committee report is adopted on third reading and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in each house. This third reading vote must be used to determine if the required number of votes has been cast."

Approved April 24, 1981.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules are adopted:

SENATE RULES
CHAPTER 1
Presiding Officer — Decorum, Order and Debate

S1-1. The senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

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S1-2. The senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers, and shall be the judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair, when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president; but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 — In addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio and television, former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4
Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report or a report without recommendation has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

A bill reported from committee without recommendation shall be ordered printed and placed on second reading.

CHAPTER 5
Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there

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shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 7
Committees

S7-1. The senate shall elect a committee on committees consisting of 5 members, except when the senate is evenly divided between parties, when the committee on committees shall consist of 6 members, 3 from each party. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate, and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education and Cultural Resources
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

S7-2. The majority floor leader shall be an ex officio member of all committees in order to establish a quorum.

S7-3. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, Select Committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

S7-4. Pairs in committee are prohibited.

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CHAPTER 8
Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may only be amended or adopted with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10
Nominations from the Governor

S10-1. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 19, 1981.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO RONALD REAGAN, PRESIDENT OF THE UNITED STATES, THE COMMISSIONER OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION, THE HONORABLE JOHN MELCHER, SENATOR FROM MONTANA, THE HONORABLE MAX BAUCUS, SENATOR FROM MONTANA, THE HONORABLE RON MARLENEE, CONGRESSMAN FROM THE SECOND CONGRESSIONAL DISTRICT, THE HONORABLE PAT WILLIAMS, CONGRESSMAN FROM THE FIRST CONGRESSIONAL DISTRICT, AND TED SCHWINDEN, GOVERNOR OF THE STATE OF MONTANA, ENCOURAGING THEM TO HAVE RESCINDED A REGULATION OF THE FEDERAL FOOD AND DRUG ADMINISTRATION THAT WOULD CAUSE THE CLOSURE OF THE DEER LODGE RESEARCH UNIT WHICH CONDUCTS DRUG RESEARCH AT THE MONTANA STATE PRISON BECAUSE SUCH CLOSURE WOULD CAUSE GREAT ECONOMIC HARDSHIP FOR THE COMMUNITY OF DEER LODGE, MONTANA.

WHEREAS, since 1966 the Deer Lodge Research Unit has conducted pharmaceutical research at the Montana State Prison, Deer Lodge, Montana, on volunteer prison inmates; and

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WHEREAS, the Deer Lodge Research Unit has 7.5 employees and an annual payroll in excess of $140,000, and if the unit continues, it is expected to employ several more persons and increase its annual payroll to $200,000; and

WHEREAS, the Deer Lodge Research Unit is funded exclusively by an ongoing grant established by pharmaceutical companies and no taxpayer money is spent on the research unit; and

WHEREAS, the Deer Lodge Research Unit, having been involved in an ongoing drug research program since 1966, has made a significant contribution to the body of knowledge available concerning the impact of new drugs on human beings; and

WHEREAS, the Deer Lodge Research Unit is administered by the University of Montana, University Foundation, and there is an independent body which insures that all research conducted at the prison is conducted under the most safety-conscious considerations and that fully monitors the research to ensure that the inmate subjects are fully protected and are bona fide volunteers; and

WHEREAS, the Deer Lodge Research Unit provides a useful summer intern program for researchers from the University of Montana; and

WHEREAS, the drug research conducted at the Deer Lodge Research Unit benefits the entire nation; and

WHEREAS, the U.S. Food and Drug Administration has proposed a regulation at Federal Register Volume 45, No. 106, page 36386, dated May 30, 1980, that would have foreclosed further research by the Deer Lodge Research Unit; and

WHEREAS, that regulation was to become effective on June 1, 1981, but because of an executive order by President Ronald Reagan requiring a reexamination of all federal regulations not yet effective to consider their economic consequences, the regulation's effective date has been indefinitely postponed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the Commissioner of the U.S. Food and Drug Administration be advised that it is the desire of the Senate of the State of Montana that the administrative regulation foreclosing the type of pharmaceutical research conducted by the Deer Lodge Research Unit, Montana State Prison, Deer Lodge, Montana, be rescinded because of the economic detriment such rule would cause the community of Deer Lodge, Montana, and because the administration of the Deer Lodge Research Unit by the University of Montana, University Foundation, precludes any abuses that may have occurred in other states and which may be cured in another manner compatible with research currently conducted.

(2) That the Secretary of the Senate send a copy of this resolution to Ronald Reagan, President of the United States, the Commissioner of the United States Food and Drug Administration, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from

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Montana, the Honorable Ron Marlenee, Congressman from the Second Congressional District, the Honorable Pat Williams, Congressman from the First Congressional District, and Ted Schwinden, Governor of the State of Montana.

Approved April 14, 1981.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RECOGNIZING AND ENCOURAGING CITIZEN PARTICIPATION IN THE INTERNATIONAL YEAR OF DISABLED PERSONS.

WHEREAS, the United Nations General Assembly has proclaimed 1981 as the International Year of Disabled Persons; and

WHEREAS, the United States Council for the International Year of Disabled Persons has established a liaison with the government of the State of Montana and designated the city of Helena as the flagship community for the state in an attempt to encourage active participation in the International Year of Disabled Persons; and

WHEREAS, the theme of the International Year of Disabled Persons is that all individuals who have a handicap should have the right to live as independently as possible, with full opportunities for participation in all phases of life; and

WHEREAS, persons in Montana with disabling conditions, both physical and mental, will benefit from a statewide and nationwide campaign to help all citizens understand disabilities and to ensure full participation by disabled persons in our society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate recognizes and supports the efforts of the International Year of Disabled Persons.

BE IT FURTHER RESOLVED, that the Senate encourages the citizens of the State of Montana to recognize and participate in local and statewide activities relating to the International Year of Disabled Persons.

Approved April 23, 1981.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUIRING ALL SENATE SUPPLIES TO BE STORED UNDER LOCK AND KEY AND ALL FURNITURE BELONGING TO THE SENATE TO BE LABELED AND NOT MOVED DURING THE INTERIM.

WHEREAS, much difficulty has been experienced in locating stored supplies and furniture belonging to the Senate; and

WHEREAS, some articles of furniture have not yet been located, and the use of Senate furniture by other state departments during the interim has caused confusion and some damage.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That all small supplies and typewriters belonging to the Senate of the State of Montana be boxed, labeled, and stored under lock and key in room 407 of the Capitol Building.

BE IT FURTHER RESOLVED, that the Sergeant-at-Arms of the Senate shall inventory all of the items of furniture in each individual office and committee room of the Senate and that all furniture belonging to the Senate remain in the particular offices and committee rooms of the Senate and shall not be removed from the various offices and committee rooms of the Senate during the interim; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be delivered to the Director of the Department of Administration, as a formal request of the Senate, that the Senate furniture remain locked in the rooms during the interim.

Approved April 23, 1981.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO JOINT RULES.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules are adopted:

HOUSE RULES
CHAPTER 1
Presiding Officer — Decorum, Order and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers, and shall be the judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore who shall perform all of the duties of the speaker in the absence of that officer, and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than thirty minutes in debate on any one motion or question, however, in committee of the whole, no member may speak over 5 minutes on any motion except the member who made the motion on the immediately pending question and that member shall have 5 minutes to close.

H1-4. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or

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introduced the immediately pending question, in which case he may speak in reply after all members choosing to speak have spoken.

H1-5. If the motions "do pass" and "do not pass" or "indefinitely postpone" both fail on Second Reading, a motion to reconsider is in order in Committee of the Whole.

H1-6. Only the following persons may be admitted to the floor of the house during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio, television, former legislators, members' spouses and their children 12 years of age and older, and visiting dignitaries.

CHAPTER 2
Meetings, Quorums, and Attendance

H2-1. Lobbying on the floor of the House of Representatives is prohibited during the session and within two hours prior to the commencement of a session and within one-half hour after recess or adjournment.

CHAPTER 3
Committees

H3-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Industry
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration/Bills and Journal
10. Local Government
11. Natural Resources
12. Human Services
13. Rules
14. State Administration
15. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

H3-2. The committee on rules shall consist of the speaker, the majority leader, and other members of the majority party appointed by the speaker,

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the minority leader, and other members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H3-3. The speaker, majority leader, and minority leader shall be ex officio members on all committees.

H3-4. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading unless they are referred to a committee by motion duly made on order of business No. 6.

CHAPTER 4
Rules

H4-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules, which shall report no later than the next legislative day. Unless recommended by the committee on rules, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by unanimous consent.

H4-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 26, 1981.

HOUSE RESOLUTION NO. 4

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO RONALD REAGAN, PRESIDENT OF THE UNITED STATES, THE COMMISSIONER OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION, THE HONORABLE JOHN MELCHER, SENATOR FROM MONTANA, THE HONORABLE MAX BAUCUS, SENATOR FROM MONTANA, THE HONORABLE RON MARLENEE, CONGRESSMAN FROM THE SECOND CONGRESSIONAL DISTRICT, THE HONORABLE PAT WILLIAMS, CONGRESSMAN FROM THE FIRST CONGRESSIONAL DISTRICT, AND TED SCHWINDEN, GOVERNOR OF THE STATE OF MONTANA, ENCOURAGING THEM TO HAVE RESCINDED A REGULATION OF THE FEDERAL FOOD AND DRUG ADMINISTRATION THAT WOULD CAUSE THE CLOSURE OF THE DEER LODGE RESEARCH UNIT WHICH CONDUCTS DRUG RESEARCH AT THE MONTANA STATE PRISON BECAUSE SUCH CLOSURE WOULD CAUSE GREAT ECONOMIC HARDSHIP FOR THE COMMUNITY OF DEER LODGE, MONTANA.

WHEREAS, since 1966 the Deer Lodge Research Unit has conducted pharmaceutical research at the Montana State Prison, Deer Lodge, Montana, on volunteer prison inmates; and

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WHEREAS, the Deer Lodge Research Unit has 7.5 employees and an annual payroll in excess of $140,000, and if the unit continues, it is expected to employ several more persons and increase its annual payroll to $200,000; and

WHEREAS, the Deer Lodge Research Unit is funded exclusively by an ongoing grant established by pharmaceutical companies and no taxpayer money is spent on the research unit; and

WHEREAS, the Deer Lodge Research Unit, having been involved in an ongoing drug research program since 1966, has made a significant contribution to the body of knowledge available concerning the impact of new drugs on human beings; and

WHEREAS, the Deer Lodge Research Unit is administered by the University of Montana, University Foundation, and there is an independent body which insures that all research conducted at the prison is conducted under the most safety-conscious considerations and that fully monitors the research to ensure that the inmate subjects are fully protected and are bona fide volunteers; and

WHEREAS, the Deer Lodge Research Unit provides a useful summer intern program for researchers from the University of Montana; and

WHEREAS, the drug research conducted at the Deer Lodge Research Unit benefits the entire nation; and

WHEREAS, the U.S. Food and Drug Administration has proposed a regulation at Federal Register Volume 45, No. 106, page 36386, dated May 30, 1980, that would have foreclosed further research by the Deer Lodge Research Unit; and

WHEREAS, that regulation was to become effective on June 1, 1981, but because of an executive order by President Ronald Reagan requiring a reexamination of all federal regulations not yet effective to consider their economic consequences, the regulation's effective date has been indefinitely postponed.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Commissioner of the U.S. Food and Drug Administration be advised that it is the desire of the House of Representatives of the State of Montana that the administrative regulation foreclosing the type of pharmaceutical research conducted by the Deer Lodge Research Unit, Montana State Prison, Deer Lodge, Montana, be rescinded because of the economic detriment such rule would cause the community of Deer Lodge, Montana, and because the administration of the Deer Lodge Research Unit by the University of Montana, University Foundation, precludes any abuses that may have occurred in other states and which may be cured in another manner compatible with research currently conducted.

(2) That the Chief Clerk of the House send a copy of this resolution to Ronald Reagan, President of the United States, the Commissioner of the United States Food and Drug Administration, the Honorable John Melcher, Senator from Montana, the Honorable Max Baucus, Senator from

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Montana, the Honorable Ron Marlenee, Congressman from the Second Congressional District, the Honorable Pat Williams, Congressman from the First Congressional District, and Ted Schwinden, Governor of the State of Montana.

Approved April 10, 1981.

HOUSE RESOLUTION NO. 5

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE LEGISLATIVE ADMINISTRATION COMMITTEE, IN CONSULTATION WITH THE SPEAKER OF THE HOUSE, TO PROVIDE FOR CERTAIN NEW EQUIPMENT AND FURNISHINGS FOR THE HOUSE OF REPRESENTATIVES.

WHEREAS, the House sound system was installed more than 10 years ago and has become inadequate and vulnerable to malfunction; and

WHEREAS, the printer for the voting system, which utilizes obsolete wiring and components, has likewise become unreliable and costly to repair; and

WHEREAS, the chairs used by members of the House of Representatives are in need of repair or replacement; and

WHEREAS, the bill retrieval system used by the House Sergeant-at-Arms is antiquated; and

WHEREAS, under Joint Rule 7-1 the Committee on Legislative Administration is the proper committee to have control of legislative property and the expenditure of funds therefor.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Administration Committee, in consultation with the Speaker of the House, is granted authority to:

(1) purchase or lease a new sound system for the House of Representatives;

(2) purchase or lease a new or rebuilt printer for the House voting system;

(3) purchase or lease a new bill retrieval system for the House; and

(4) contract for the repair and refurbishing of all of the chairs used in the House chambers.

BE IT FURTHER RESOLVED, that the Legislative Council pay for such equipment and repairs from funds available to the House of Representatives as directed by the Legislative Administration Committee.

Approved April 22, 1981.

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HOUSE RESOLUTION NO. 6

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AMEND HOUSE RULE H3-1 TO REVISE THE STRUCTURE OF THE HOUSE STANDING COMMITTEES.

WHEREAS, during a legislative session, the workload of the standing committees of the House of Representatives varies considerably among those committees; and

WHEREAS, consolidation of the standing committees would result in a more even distribution of work among the legislators and committee staff; and

WHEREAS, such a consolidation would result in fewer conflicts of schedules because each legislator would be assigned to only one major committee and the variables for such conflicts would thus be reduced; and

WHEREAS, such a consolidation would result in each legislator acquiring greater expertise in a concentrated field and would reduce the overlapping of issues between committees; and

WHEREAS, such a consolidation would result in streamlining of the legislative process and could result in cost savings to the state by reducing personnel and other committee costs.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That House Rule H3-1 be amended to read:

"H3-1. The standing committees of the house are as follows:

1. Appropriations
2. Business and *Labor*
3. Education and Human Services
4. Judiciary
5. Legislative Administration/Bills and Journal
6. *Local Government and Transportation*
7. *Agriculture and* Natural Resources
8. Rules
9. State Administration
10. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on."

Approved April 24, 1981.

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HOUSE RESOLUTION NO. 8

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND ENCOURAGING CITIZEN PARTICIPATION IN THE INTERNATIONAL YEAR OF DISABLED PERSONS.

WHEREAS, the United Nations General Assembly has proclaimed 1981 as the International Year of Disabled Persons; and

WHEREAS, the United States Council for the International Year of Disabled Persons has established a liaison with the government of the State of Montana and designated the city of Helena as the flagship community for the state in an attempt to encourage active participation in the International Year of Disabled Persons; and

WHEREAS, the theme of the International Year of Disabled Persons is that all individuals who have a handicap should have the right to live as independently as possible, with full opportunities for participation in all phases of life; and

WHEREAS, persons in Montana with disabling conditions, both physical and mental, will benefit from a statewide and nationwide campaign to help all citizens understand disabilities and to ensure full participation by disabled persons in our society.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives recognizes and supports the efforts of the International Year of Disabled Persons.

BE IT FURTHER RESOLVED, that the House of Representatives encourages the citizens of the State of Montana to recognize and participate in local and statewide activities relating to the International Year of Disabled Persons.

Approved April 23, 1981.

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APPENDIX

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APPENDIX

CONSTITUTIONAL AMENDMENT NO. 9

By Chapter 463, Laws of 1979, the Legislature proposed an amendment to the Constitution of the State of Montana to allow statutory exceptions to the confidentiality of the documents of the judicial standards commission.

Chapter 463 was approved by the following vote at the General Election held November 4, 1980:

For:	181,140
Against:	132,452

The title and text of Chapter 463 follow.

An Act to Submit to the Qualified Electors of Montana an Amendment to Article VII, Section 11, of the Montana Constitution to Allow Statutory Exceptions to the Confidentiality of the Documents of the Judicial Standards Commission.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 11 of the Montana constitution is amended to read:

"Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints *and* make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute."

Section 2. Effective date. If approved by the electorate, this amendment is effective January 1, 1981.

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Section 3. Submission to electors. This amendment shall be submitted to the electors of the state of Montana at the general election to be held in November, 1980, by printing on the ballot the full title of this act and the following:

☐ FOR *allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.*

☐ AGAINST *allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.*

INITIATIVE NO. 84

By Initiative the people proposed a law that would forbid the disposal of radioactive waste material within the State of Montana. The proposal does not specifically prohibit the mining of minerals such as uranium, but does forbid the disposal of radioactive waste produced by milling or other processing of ore. Some radioactive material used for medical, educational, and scientific purposes may be deposited in Montana. Criminal penalties would be imposed for violations of these provisions. The Initiative was approved by the following vote at the General Election held November 4, 1980.

For:	172,796
Against:	172,173

The title and text of the Initiative law follow.

An Initiative Entitled: "An Act to Forbid the Disposal of Radioactive Waste Material Within the State of Montana. The Proposal Does Not Specifically Prohibit the Mining of Minerals Such as Uranium, but Does Forbid the Disposal of Radioactive Waste Produced by Milling or Other Processing of Ore. Some Radioactive Material Used for Medical, Education, and Scientific Purposes May Be Deposited in Montana. Criminal Penalties Would Be Imposed for Violations of These Provisions."

Be it enacted by the People of the State of Montana:

New Section 1. There is a new MCA section that reads as follows:

"Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to prohibit the disposal of certain radioactive material."

Section 2. Section 75-3-103(1), MCA is amended to read as follows:

"(1) "Byproduct material" means ~~a~~ *(1) any* radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or utilizing special nuclear material, *and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.*"

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Section 3. Section 73-3-302, MCA is amended to read as follows:

"75-3-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion. (1) No person may dispose of ~~in Montana~~ large quantity radioactive material, *byproduct material, or special nuclear material within the state of Montana* ~~produced in other states~~.

(2) Byproduct material *(except large quantity radioactive material)* possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and *similar uses* ~~other purposes~~ licensed by the United States nuclear regulatory commission shall be excepted from this part, *provided that such material is being or has been lawfully disposed of within Montana upon the effective date of this Act* ~~during the period of possession, use, and transportation prior to disposal~~.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Major Facility Siting Act, *or the mining of any raw ore, provided that such activity is not inconsistent with this part.*"

Section 4. Section 75-3-303, MCA is amended to read as follows:

"75-3-303. Penalty. A person ~~convicted of violating this part is guilty of a misdemeanor and~~ *who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana* shall be fined an amount not ~~less~~ *more* than ~~$250~~ *$5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined not more than $1,000 for each offense.* In this part, each day of violation constitutes a separate offense."

Section 5. Severability. If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Section 6. Codification. New section 1 is intended to be codified as an integral part of Title 75, Chapter 3, Part 3, and the provisions contained in Title 75, Chapter 3, Part 3 apply to new section 1.

Section 7. Effective date. This Act shall become effective December 1, 1980.

INITIATIVE NO. 85

By Initiative the people proposed a law to require public disclosure of money spent to influence action of a public official. All individuals or businesses who employ lobbyists and spend more than $1,000 a year to promote or oppose official action of a public official must give a complete accounting of all money spent. The proposal does not apply to individual

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citizens lobbying on their own behalf. Elected officials are required to publicly disclose their business interests. Criminal and civil penalties are provided for violations of the provisions of this Initiative. The Initiative was approved by the following vote at the General Election held November 4, 1980:

For:	259,698
Against:	76,358

The title and text of the Initiative law follow.

An Initiative Entitled: "An Act to Require Public Disclosure of Money Spent to Influence Action of a Public Official. All Individuals or Businesses Who Employ Lobbyists and Spend More Than $1000 a Year to Promote or Oppose Official Action of a Public Official Must Give a Complete Accounting of All Money Spent. The Proposal Does Not Apply to Individual Citizens Lobbying on Their Own Behalf. Elected Officials Are Required to Publicly Disclose Their Business Interests. Criminal and Civil Penalties Are Provided for Violations of the Provisions of This Initiative."

Be it enacted by the People of the State of Montana:

Section 1. Section 5-7-101, MCA, is amended to read:

"5-7-101. Purposes of chapter. *(1)* The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, ~~and~~ to provide for the licensing of lobbyists and the suspension or revocation of the licenses, *to require elected officials to make public their business interests, and to require disclosure of the amounts of money spent for lobbying.*

(2) Nothing in this chapter subjects any Montana citizen lobbying on his/her own behalf to any reporting requirements nor deprives any such citizen of the constitutional right to communicate with public officials."

Section 2. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following ~~words and phrases shall have the meanings respectively ascribed to them~~ *definitions apply in this chapter*:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision thereof, or other organization or group of persons.

(3) "Public official" means any individual, elected or appointed, acting in his official capacity for the state or local government or any political subdivision thereof, but does not include those acting in a judicial or quasi-judicial capacity.

(4)~~(1)~~ "Lobbying" ~~means~~ *includes*:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity*; and*

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(b) the practice of promoting or opposing official action by any public official in the event the person engaged in such practice expends $1,000 per calendar year or more exclusive of personal travel and living expenses.

(5) (a)~~(2)~~ "Lobbyist" means any person who engages in the practice of lobbying for hire ~~except in the manner authorized by 5-7-304~~.

(b) "Lobbyist" does not include

(i) any individual Montana citizen acting solely on his/her own behalf, or

(ii) any individual working for the same principal as a licensed lobbyist, such individual having no personal contact with any public official on behalf of his/her principal.

(c) Nothing in this section ~~shall be construed to deprive~~ *deprives* any citizen not lobbying for hire of ~~his~~ *the* constitutional right to communicate with ~~members of the legislature~~ *public officials.*

(6) "Lobbying for hire" ~~shall include~~ *includes* activities of any officers, agents, attorneys, or employees of any principal who are paid, *reimbursed,* ~~a regular salary~~ or retained by such principal and whose duties include lobbying. When ~~a person~~ *an individual* is reimbursed only for his personal living and travel expenses, *which together do not exceed $1,000 per calendar year,* ~~he~~ *that individual* shall not be considered to be lobbying for hire.

(7)~~(3)~~ "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

~~(b) soliciting employment from any principal;~~

(b)~~(c)~~ instigating ~~the introduction of legislation~~ *action by any public official* for the purpose of obtaining employment in opposition thereto;

(c)~~(d)~~ attempting to influence the ~~vote of legislators~~ *action of any public official* on any measure pending or to be proposed by

(i) the promise of support or opposition at any future election, ~~by any means other than argument on the merits thereof, or~~

(ii) promise of financial support,

(iii) ~~by~~ making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, *any principal,* or ~~of~~ any legislator,

(iv) any improper economic reprisal or other unlawful retaliation against any public official, or

(v) any means other than argument on the merits thereof;

(d) attempting to influence a decision or vote by a hearing examiner or quasi-judicial officer in any contested case proceeding under Part 6, Chapter 4, Title 2, MCA except as provided therein;

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(e) attempting to knowingly deceive any public official with regard to the pertinent facts of an official matter or attempt to knowingly misrepresent pertinent facts of an official matter to any public official; or

(f)~~(e)~~ engaging in practices which reflect discredit on the practice of lobbying ~~or the legislature~~.

(8)~~(4)~~ "Principal" means *any person who makes payments in excess of $1,000 per calendar year for any of the following*

(a) *to engage a lobbyist, or* ~~any person, corporation, or association which engages a lobbyist or other person in connection with any legislation pending before the legislature or to be proposed affecting the pecuniary interest of such person, corporation, or association; or~~

(b) *in the case of a person other than an individual, to solicit, directly, indirectly or by an advertising campaign, the lobbying efforts of another person* ~~any board, department, commission, or other agency of the state, any county, or municipal corporation which engages a lobbyist or other person in connection with any legislation pending or to be proposed affecting the statutory powers, duties, or appropriation of such agency, county, or municipal corporation~~.

(9)~~(5)~~ "Docket" means the register *and reports* of ~~licensed~~ lobbyists *and principals* maintained by the ~~secretary of state~~ *commissioner* pursuant to 5-7-201.

~~(6) "Pecuniary interest" includes without limitation any legislation which creates, alters, or repeals any statutory charge by way of tax, license fee, registration fee, or otherwise; which creates, alters, or repeals any statutory privilege, power, restriction, or obligation of any principal; or which creates, alters, or repeals the powers or duties of any court or governmental agency before which the principal does business.~~

(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment

(a) direct or indirect payment to a lobbyist by a principal, as salary, fee, or compensation for expenses or for any other purpose;

(b) payment in support of or assistance to a lobbyist or lobbying activities, including, but not limited to, the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means any holding or interest whose fair market value is greater than $1,000, in any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed individual, holding company, joint stock company, receivership, trust or other entity or property held in anticipation of profit, but does not include non-profit organizations.

(13) "Commissioner" means the commissioner of campaign finances and practices, created by 13-37-102, renamed in [Section 19] the commissioner of political practices.

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(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including, but not limited to legislators, public service commissioners and district court judges. The term "official-elect" shall also apply only to such offices."

Section 3. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses — fees — eligibility. (1) Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this chapter may be licensed as a lobbyist. The ~~secretary of state~~ *commissioner* shall provide a license application form. The application form may be obtained in the office of the ~~secretary of state~~ *commissioner* and filed therein. Upon approval of the application by the ~~secretary of state and payment~~ *and receipt* of the license fee of $10 ~~to~~ *by* the ~~secretary of state~~ *commissioner*, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more *enumerated* principals. Each license shall expire on December 31 of each ~~odd-numbered~~ *even-numbered* year *or may be terminated at the request of the lobbyist.*

(2) No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 days of the date of the filing of the application.

(3) The *fines and* license fees collected ~~by the secretary of state~~ under this chapter shall be deposited ~~by him~~ in the state treasury."

Section 4. Section 5-7-105, MCA, is amended to read:

"5-7-105. Suspension of lobbying privileges. No lobbyist whose license has been suspended ~~or revoked~~ and no person who has been ~~convicted~~ *adjudged guilty* of a violation of any provision of this chapter may engage in lobbying *for hire* until *that person* ~~he~~ has been reinstated to the practice ~~of lobbying~~ and duly licensed."

Section 5. Section 5-7-201, MCA, is amended to read:

"5-7-201. Docket — contents. The ~~secretary of state~~ *commissioner* shall ~~prepare and keep a docket in which shall be entered~~ *make available to the public the information required by this chapter, including but not limited to* the name and business address of each lobbyist, the name and business address of his/*her* principal, and the subject or subjects ~~of legislation~~ to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. *The docket entry for each principal shall also indicate the principal's required reports of payments to influence official action by a public official.*"

Section 6. Section 5-7-202, MCA, is amended to read:

"5-7-202. Docket — public record. Such docket shall be a public record and open to the inspection of any ~~citizen~~ *individual* upon demand at any time during the regular business hours of the office of the *commissioner* ~~secretary of state~~."

Section 7. Section 5-7-207, MCA, is amended to read:

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"5-7-207. Report to legislature. Beginning with the first ~~week~~ *Tuesday* following the beginning of any regular or special session of the legislature and on ~~every~~ *the first* Tuesday ~~thereafter~~ ~~for~~ ~~the~~ ~~duration~~ ~~of~~ ~~such~~ ~~session~~ *of every month thereafter during which the legislature is in session*, the ~~secretary~~ ~~of~~ ~~state~~ *commissioner* shall from his/*her* records report to each *member of each* house of the legislature the names of lobbyists registered under this chapter, not previously reported, the names of the ~~persons~~ *principals* whom they represent as ~~such~~ ~~lobbyist~~ *lobbyists*, and the ~~subject~~ *subjects* of legislation in which ~~they~~ ~~are~~ *each principal is* interested."

Section 8. Section 5-7-301, MCA, is amended to read:

"5-7-301. Prohibition of practice without license and registration. (1) No ~~person~~ *individual* may practice as a lobbyist unless ~~he~~ *that individual* has been licensed under 5-7-103 and ~~unless~~ ~~he~~ ~~is~~ listed on the docket as employed in respect to *all the* ~~such~~ matters ~~as~~ he/*she* is promoting or opposing.

(2) No principal may directly or indirectly authorize or permit any lobbyist employed by *that principal* ~~him~~ to practice lobbying ~~in~~ ~~respect~~ ~~to~~ ~~any~~ ~~legislation~~ ~~affecting~~ ~~the~~ ~~pecuniary~~ ~~interest~~ ~~of~~ ~~the~~ ~~principal~~ until the lobbyist is duly licensed and the ~~name~~ *names* of the lobbyist *and the principal are* ~~is~~ duly entered on the docket."

Section 9. Section 5-7-302, MCA, is amended to read:

"5-7-302. Prohibited compensation. No person may be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending ~~legislation~~ *official action by a public official* or upon any other contingency connected with ~~the~~ *such* action ~~of~~ ~~the~~ ~~legislature,~~ ~~of~~ ~~either~~ ~~branch~~ ~~thereof,~~ ~~or~~ ~~of~~ ~~any~~ ~~committee~~ ~~thereof~~."

NEW SECTION. Section 10. Ethical conduct. No lobbyist or principal shall engage in, or directly or indirectly authorize, any unprofessional conduct.

NEW SECTION. Section 11. Principals to file accountings.

(1) A principal subject to this chapter shall file with the commissioner an accounting of payments made to influence the official action of a public official.

(2) If such payments are made solely to influence legislative action, such accounting shall be made:

(a) before February 16th of any year the legislature is in session and shall include all payments made in that calendar year prior to February 1st;

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month; and

(c) within 60 days following adjournment of such session and shall include all payments made during such session, except as has previously been reported.

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(3) If such payments are made to influence any other official action by a public official or made to influence such other action and legislative action, such accounting shall be made:

(a) before February 16th of the calendar year following such payments and shall include all payments made during the prior calendar year; and

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month.

(4) If no such payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating such.

(5) Each accounting filed under this section shall:

(a) list all payments for lobbying in each of the following categories:

(i) original and derivative research (for which the cost may be estimated if necessary) done to support a lobbying argument or presentation;

(ii) publication and distribution of each publication, except that the cost of a newsletter or leaflet distributed to the membership of a principal need not be reported unless over one-half of that newsletter or leaflet is devoted to lobbying matters;

(iii) other printing;

(iv) news media;

(v) advertising, including production costs;

(vi) postage;

(vii) travel and personal living expenses;

(viii) salaries and fees, including allowances, rewards, and contingency fees;

(ix) entertainment, including all foods and refreshments;

(x) telephone and telegraph; and

(xi) other office expenses;

(b) itemize, identifying the payee and the beneficiary;

(i) each separate payment conferring $10 or more benefit to any public official and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of one calendar year paid to the

principal, regardless of whether it was paid solely for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which such payment was earmarked;

(d) list each political contribution, including anything of value, paid to any candidate for elective public office, to any committee established to support or oppose a candidate for elective public office, or to any committee to support or oppose any initiative, referendum, or other ballot issue, whether such payment is made directly or indirectly by the principal or any lobbyist who received compensation or reimbursement for such payment from the principal;

(e) list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against such action; and

(f) be kept by the commissioner for a period of ten years.

NEW SECTION. Section 12. Principals required to report — penalty for failure to report or for false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report is subject to the penalty provided in 5-7-305 as well as any civil action provided for in this Chapter. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

NEW SECTION. Section 13. Reimbursement. Whenever a lobbyist invites a public official to attend a function which the lobbyist or his/her principal have fully or partially funded or sponsored, or whenever a lobbyist offers a public official a gift, the lobbyist must, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. Such expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee".

NEW SECTION. Section 14. Governmental reporting. Budget preparation or response to requests of a house or committee of the legislature by any governmental entity shall not be considered lobbying payments for the purposes of this chapter.

NEW SECTION. Section 15. Audit of final accounting statements. The commissioner shall examine and may audit the accountings filed under [Section 11] and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of seven years from the date of filing all records supporting the accountings filed under [Section 11]. All such records shall be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and such attorneys are given the power to subpoena and compel attendance; issue enforceable civil investigative demands; take evidence; and require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this Chapter.

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NEW SECTION. Section 16. Disclosure by elected officials.

(1) Prior to December 15 of each even-numbered year, each elected official or official-elect shall file with the commissioner a business disclosure statement on a form provided by the commissioner. The statement shall provide the following information: The name, address, and type of business of such individual and each member of such individual's immediate family. For this purpose "immediate family" includes the individual's spouse and minor children only.

(2) No such individual may assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until such statement has been filed.

(3) The commissioner shall make such business disclosure statements available to any individual upon request.

NEW SECTION. Section 17. Commissioner to make rules — statement of intent. (1) The commissioner shall promulgate and publish rules necessary to carry out the provisions of [this act] in conformance with the Montana Administrative Procedure Act and, in particular, shall provide rules necessary to allocate salary, expenses, and any other payments between lobbying activities and other activities not connected with lobbying for any person whose activities are not solely limited to lobbying.

(2) Such rules shall be designed to effect and promote the purposes of this act, express or implied. Such rules shall be as simple and easily complied with as possible.

NEW SECTION. Section 18. Civil penalties and enforcement. (1) Any person who violates any of the provisions of this chapter shall be subject to civil penalties of not less than $250 and not more than $7,500 according to the discretion of the District court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter shall have his/her license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this act is additionally subject to recall under Montana Recall Act, § 2-16-601, MCA, et seq, and such violation shall constitute an additional basis for recall to those mentioned in § 2-16-603(3), MCA.

(2) The attorney general, commissioner, or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(3) If a prosecution is undertaken by the commissioner or any county attorney, all costs associated with the prosecution shall be paid by the state of Montana.

(4) (a) Any individual who has notified the commissioner, the attorney general and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may himself/herself bring in the name of the state an action (hereinafter referred to as a citizen's action) authorized under this chapter if

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(i) the attorney general and the appropriate county attorney have failed to commence an action hereunder within 40 days after such notice, and

(ii) said attorneys then fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification shall toll the statute of limitations applicable until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, he/she shall be entitled to be reimbursed by the state of Montana for costs and attorney's fees incurred: Provided that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) No civil action may be brought under this section more than seven years after the occurrence of the facts which give rise to the action.

(6) All civil penalties imposed pursuant to this section shall be deposited in the state general fund.

(7) A hearing under this chapter shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible but at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(8) If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner.

NEW SECTION. Section 19. Recodification. The office of the commissioner of campaign finances and practices, created by 13-37-102, shall be known as the office of the commissioner of political practices.

NEW SECTION. Section 20. Repealer. Sections 5-7-104, 5-7-205, 5-7-206, 5-7-303, and 5-7-304, MCA are repealed.

NEW SECTION. Section 21. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 22. Effective date. This act shall be effective upon passage and approval by the voters of the state of Montana.

INITIATIVE NO. 86

By Initiative the people proposed a law to change the Montana income tax structure to require that tax brackets, exemptions, standard deductions, and minimum filing requirements be adjusted each year to

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prevent tax increases due solely to inflation. The Initiative was approved by the following vote at the General Election held November 4, 1980:

For:	233,497
Against:	102,635

The title and text of the Initiative law follow.

An Initiative Entitled: "An Act to Change the Montana Income Tax Structure to Require That Tax Brackets, Exemptions, Standard Deductions, and Minimum Filing Requirements Be Adjusted Each Year to Prevent Tax Increases Due Solely to Inflation. If This Initiative is Enacted It Will Be Effective in 1981."

Be it enacted by the People of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103 in effect on January 1, 1980;

(b) the exemptions contained in 15-30-112 in effect on January 1, 1980;

(c) the maximum standard deduction provided in 15-30-122 in effect on January 1, 1980.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

~~(1)~~*(3)* "Department" means the department of revenue.

~~(2)~~*(4)* "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(3)~~*(5)* "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

~~(4)~~*(6)* "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

~~(5)~~*(7)* "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding

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unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

~~(6)~~*(9)* "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(7)~~*(10)* "Knowingly" is as defined in 45-2-101.

~~(8)~~*(11)* "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(9)~~*(12)* "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(12)~~*(15)* "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

~~(13)~~*(16)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(14)~~*(17)* "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

~~(15)~~*(18)* "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. *(1)* There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax *on the following brackets of taxable income as adjusted under subsection (2)* at the following rates:

~~(1)~~*(a)* on the first $1,000 of taxable income or any part thereof, 2%;

~~(2)~~*(b)* on the next $1,000 of taxable income or any part thereof, 3%;

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~~(3)~~*(c)* on the next $2,000 of taxable income or any part thereof, 4%;

~~(4)~~*(d)* on the next $2,000 of taxable income or any part thereof, 5%;

~~(5)~~*(e)* on the next $2,000 of taxable income or any part thereof, 6%;

~~(6)~~*(f)* on the next $2,000 of taxable income or any part thereof, 7%;

~~(7)~~*(g)* on the next $4,000 of taxable income or any part thereof, 8%;

~~(8)~~*(h)* on the next $6,000 of taxable income or any part thereof, 9%;

~~(9)~~*(i)* on the next $15,000 of taxable income or any part thereof, 10%;

~~(10)~~*(j)* on any taxable income in excess of $35,000 or any part thereof, 11%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that year and round the cummulative brackets to the nearest $100. The resulting adjusted brackets are effective for that year and shall be used as the basis for imposition of the tax in subsection (1) of this section."

Section 3. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsections (7) *and (8)*, in the case of an individual, the exemptions provided by subsections (2) through (6) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no

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gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979.

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(8) For taxable years beginning after December 31, 1980, the department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemption are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 4. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. *(1)* In the case of a resident individual, a standard deduction equal to 15% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,000, *as adjusted under the provisions of subsection (2)*, except in the case of a single joint return of husband and wife the maximum standard deduction shall be $2,000, *as adjusted under the provisions of subsection (2)*. The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 5. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $940, *as adjusted under the provisions of subsection (7)*, and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $1,880, *as adjusted under the provisions of subsection (7)*, shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, *as adjusted under the provisions of 15-30-112(7) and (8)*, for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4), as prorated according to 15-30-112(6).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor

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deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return."

NEW SECTION. Section 6. Adjusted base year structure to appear on tax forms. Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

Section 7. Applicability. This act applies to taxable years beginning after December 31, 1980.

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Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that,

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates.

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CHANGES IN NAMES DECREED IN 1979

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 3, 1979	Mabel Alberta Smith	Margo Alberta Smith	Great Falls
Jan. 10, 1979	Joseph Bull Tail, Jr.	Joseph Buffalo Bull Tail, Jr.	Yellowstone Co.
Jan. 10, 1979	Daniel Brian Burrell	Daniel Brian Kavanaugh	Butte
Jan. 10, 1979	James C. Burrell	James C. Kavanaugh	Butte
Jan. 10, 1979	Nancy Lynn Burrell	Nancy Lynn Kavanaugh	Butte
Jan. 10, 1979	Sandra Elizabeth Burrell	Sandra Elizabeth Kavanaugh	Butte
Jan. 10, 1979	Glenda Marie Huszti	Glenda Marie Dodd	Cascade Co.
Jan. 10, 1979	Ron Jerry Huszti	Ron Jeyy Dodd	Cascade Co.
Jan. 10, 1979	Tonya Lee Parry	Tonya Lee Brown	Helena
Jan. 11, 1979	Linda H. Cross	Linda L. Harbine	Missoula Co.
Jan. 15, 1979	Donald Edward Johnson	Donald Edward Anderson	Yellowstone Co.
Jan. 15, 1979	Glenda Lynn Noble	Glenda Lynn Soape	Yellowstone Co.
Jan. 16, 1979	Charles Joseph Patterson	Charles Joseph Walker	Bynum
Jan. 16, 1979	Alyce M. Robinette	Alice Welch-Herron	Helena
Jan. 17, 1979	Johna L. Arneson	Johna L. Hanson	Miles City
Jan. 29, 1979	Adrian Michael Meyers	Adrian Michael Good Voice	Missoula
Jan. 29, 1979	Mary Katherine Parmenter	Mary Katherine Parmenter Duffin	Missoula
Jan. 29, 1979	Michael Kirk Parmenter	Michael Kirk Parmenter Duffin	Missoula
Jan. 29, 1979	Victor Glen Parmenter	Victor Glen Parmenter Duffin	Missoula
Feb. 6, 1979	Linda Suzette Hill	Linda Suzette Hoglund	Fairfield
Feb. 13, 1979	Carol Ruth White	Carol Ruth Hiers	Miles City
Feb. 14, 1979	Deborah Charlene Wolfe	Deborah Charlene Derr	Fergus Co.
Feb. 15, 1979	Kenneth D. Rector	Candice Marie Evans	Missoula Co.
Feb. 20, 1979	Geraldine Braae	Geraldine Elizabeth Eddleman	Missoula Co.
Feb. 20, 1979	Cheryl Jean Tumbleson	Cheryl Jean Dolch	Cascade Co.
Feb. 20, 1979	William Gregory Tumbleson	John Gregory Dolch	Cascade Co.
Feb. 22, 1979	Elizabeth Ann Chadwick	Elizabeth Ann Fuller Ferris	Missoula
Feb. 23, 1979	Shawn Richard Iholts	Ceann Ruadh Rusihart Liggett-Eicholtz	Yellowstone Co.
Feb. 26, 1979	Grant Edward Hanzlik	Grant Edward Lamport	Missoula
March 6, 1979	Laurie Lee Arensmeyer	Laurie Lee Gebhart	Choteau
March 14, 1979	Tami Ann Draper	Tami Ann Fougner	Miles City
March 20, 1979	Wanda Lee Seney	Wanda Lee Lemmer	Helena
March 27, 1979	Wade Thomas Herman	Wade Thomas Dudley	Columbia Falls
March 27, 1979	Robin Regina Phipps	Robin Regina Belcher	Livingston
April 2, 1979	Rose Marie Murray	Robin Marie Murray	Missoula
April 2, 1979	Patricia Ann Wainright	Patricia Ann Harding	Dutton
April 2, 1979	Brenda Kay Zabroski	Brenda Kay Bullock	Miles City
April 3, 1979	Kathleen Ann Ramsey	Kathleen Ann Rearden	Fairfield
April 5, 1979	Patsy Sue Hilliard	Patsy Sue McLean	Great Falls
April 9, 1979	Susan Gail Newell Ching	Susan Gail Newell	Bozeman
April 9, 1979	Matthew John Huber	Matthew John Campbell	Bozeman
April 12, 1979	Patricia Joan Schulz	Patricia Joan McKeral	Yellowstone Co.
April 13, 1979	Shirley Joyce Edwards	Shirley Joyce Sholey	Butte
April 17, 1979	Arlett L. Laventure	Arlett L. Young	Fairfield
April 18, 1979	Phillis M. Beeler	Phillis M. Stearns	Miles City
April 23, 1979	Kathy Ann Murphy	Kathy Ann Fullmer	Bozeman
April 25, 1979	Danielle Renee Erlenbach	Danielle Renee Certain	Helena
April 25, 1979	Denise Antoniette Erlenbach	Denise Antoniette Certain	Helena
April 25, 1979	David Michael Ross	David Michael Kosmann	Yellowstone Co.
May 3, 1979	Dennis Roy Biggs	Dennis Roy Helms	Helena
May 3, 1979	Deanna Merlene Christensen	Deanna Merlene Helms	Helena
May 3, 1979	Gertrude Westenberg	Gertrude Engebretson	Miles City
May 4, 1979	Holly Ann Connors	Holly Ann Layne	Butte
May 7, 1979	Susan Annette Speegle	Susan Annette West	Bozeman
May 14, 1979	Alfred LeRoy Jenni	Alfred LeRoy Jensen	Helena
May 14, 1979	Jason Edward vonBorstel	Jason Edward Stocks	Missoula
May 17, 1979	Richard Clint Krantz	Donald Richard Fisher	Missoula
May 17, 1979	Teri Rae Pearce Krantz	Teri Rae Pearce Fisher	Missoula
May 18, 1979	William Edward Rowe	Edward William Medvit	Butte
May 21, 1979	Katherine Gail Hightower	Katherine Gail Calovis	Yellowstone Co.
May 21, 1979	Jillian Emma Remillett, a/k/a/ Jillian Emma Clinton	Jillian Emma Clinton	Bozeman
May 21, 1979	Lonwood Max Roach	Lonwood Max Castro	Havre
May 21, 1979	Bonnye Kathleen Yancey	Bonnye Kathleen Earles	Yellowstone Co.
May 22, 1979	Sharon Ameline	Sharon Hoyt	Choteau

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CHANGES IN NAMES DECREED IN 1979

Date of Judgment	Original Name	Name Decreed	Residence
May 22, 1979	Peggy Diane Lucas	Peggy Diane Alfson	Fairfield
May 22, 1979	Jeremy Andrew Readicker	Jeremy Andrew Rapp	Fairfield
May 22, 1979	William Charles Readicker	William Charles Rapp	Fairfield
May 24, 1979	Jason Victor Wilson	Jason Emmerson Myers	Missoula
May 25, 1979	Bert Thomas Edwards	Bert Thomas Sholey	Butte
May 25, 1979	Carol Arlene Edwards	Carol Arlene Sholey	Butte
May 25, 1979	Earl Richard Edwards	Earl Richard Sholey	Butte
May 29, 1979	Harriet L. Hunt	Harriet L. Thompson	Miles City
May 29, 1979	Marie Alice Nichols	Alice Anne Horak	Dutton
May 31, 1979	Garol Darlene Cooper	Lisa Mariaisbella Cooper	Missoula
June 7, 1979	John Gamba	Justin Metuchen Gamba	Missoula
June 7, 1979	Henry Frederick Torres	Ricardo H. Torres	Kalispell
June 8, 1979	Colleen Marie Fairchild	Colleen Marie Hayes	Butte
June 11, 1979	Daniel John Bayers	Daniel John Belk	Bozeman
June 11, 1979	Nancy Ann Bayers	Nancy Ann Belk	Bozeman
June 14, 1979	Paul H. Meyer, Jr.	Jake Apul Meyer	Havre
June 15, 1979	Daniel John Gilkerson	Daniel Marcus John Gilkerson	Yellowstone Co.
June 18, 1979	Alfred Lueder	Orville Helmueth Leader	Yellowstone Co.
June 25, 1979	Leslie Kiss	Lester Allen Kish	Bozeman
June 29, 1979	Beulah W. Conway	Beulah W. Williams	Yellowstone Co.
June 29, 1979	Jeffrey Vern Essman	Jeffrey Vern Essmann	Butte
June 29, 1979	Sherry Josephine Holmes	Sherry Josephine Thomas	Butte
July 2, 1979	Steven John Stoner	Steven John Wyse	Glendive
July 4, 1979	Susan White Singer	Susan Singer Vincent	Missoula
July 9, 1979	Charlene Marie Bolin	Charlene Marie Gleason	Missoula Co.
July 9, 1979	Carolyn C. Day	Carolyn A. Clemens	Bozeman
July 9, 1979	Michael John Thompson	Michael John Reynolds	Bozeman
July 10, 1979	Maggie Marie Brown	Maggie Marie Dougherty	Columbia Falls
July 10, 1979	Karen Lynn McSorley	Karen Lynn Brackney	Choteau
July 10, 1979	Kevin Michael McSorley	Kevin Michael Brackney	Choteau
July 10, 1979	Loretta Jean Toy	Loretta Jean Bryant	Great Falls
July 11, 1979	Genevieve W. Parrett	Genevieve Florence Welch	Lake Co.
July 11, 1979	Jeanne T. Pospisil	Jeanne M. Thompson	Fergus Co.
July 11, 1979	Joshua Bridger Waldhalm	Joshua Bridger Carlino	Billings
July 16, 1979	Frances Carol Woehl	Frances Carol Carpenter	Miles City
July 17, 1979	Tad Toring Paulson	Tad Toring Stephen	Yellowstone Co.
July 30, 1979	Julie Anne Whiting	Sidreis Renee Whiting	Glendive
Aug. 2, 1979	Sherri Lynn Meyer	Sherri Lynn Brotzman	Missoula
Aug. 2, 1979	Patricia Diane Root	Patricia Diane Hedge	Miles City
Aug. 6, 1979	Larissa Marie Ortloff	Larissa Marie Dennis	Helena
Aug. 8, 1979	William Anthony Burks	Anthony Gordon Burks	Cascade Co.
Aug. 16, 1979	Sherian Louise Lowenstein	Patrice Ann Marie Sanzone	Missoula
Aug. 16, 1979	Carol Sue Pearce	Carole Sue Reeves	Missoula
Aug. 17, 1979	Ramineni Sarat Babu	Sarath Babu Ramineni	Miles City
Aug. 17, 1979	Jacquelyn Lee Sheriff	Jacquelyn Lee Williams	Billings
Aug. 20, 1979	Marilyn Diane Dunkle	Alexandria Marilyn Dunkle	Bozeman
Aug. 20, 1979	Jean Rose Milby	Jean Rose Johnston	Bozeman
Aug. 20, 1979	Ladonna L. Sisco	Ladonna L. Fox	Miles City
Aug. 20, 1979	Paul Stephen Gabriel Svorcek	Paul Stephen Gabriel Rapp-Svrcek	Missoula
Aug. 21, 1979	Gary James Hamlin	Gary James Armstrong	East Helena
Aug. 31, 1979	Kenneth Gary Crittendon	Kenneth Gary Hooper	Butte
Aug. 31, 1979	Lynette Larae Crittendon	Lynette Larae Hooper	Butte
Sept. 4, 1979	Mary Paulette Daniels	Mary Paulette Isle	Wolf Point
Sept. 4, 1979	Paul Scott Daniels	Paul Scott Isle	Wolf Point
Sept. 4, 1979	Daniel Raymond Nelson	Danyell Raymond Nelson	Wilsall
Sept. 5, 1979	Bruce F. Lempea	Bruce Franklin Nelson	Fairfield
Sept. 5, 1979	John W. Lempea	John William Nelson	Fairfield
Sept. 6, 1979	Sandra Lynn Lewis	Sandra Lynn Courtnage	Helena
Sept. 10, 1979	Betty Carol McConnell	Jessi Theresa McConnell	Fergus Co.
Sept. 14, 1979	Rob Allen Smith	Rob Allen Wenger	Butte
Sept. 14, 1979	Therese S. Smith	Therese S. Wenger	Butte
Sept. 17, 1979	Dwane Edward Heimark	David Edward Nagle	Missoula Co.
Sept. 17, 1979	James Gilbert Smith	James Gilbert Martensen	Helena
Sept. 18, 1979	Michelle Marie Foutz	Michelle Marie Bruce	Choteau
Sept. 20, 1979	Maureen Alice Buckley	Mhara Brighide O Buachalla	Missoula
Sept. 20, 1979	Terry Torgerson Gilbert	Terry Raeann Torgerson	Olney
Sept. 20, 1979	Sandra Rae McGuiness	Inge Piah Skøden	Missoula
Sept. 24, 1979	William Joe Cash	William Joel Hinkle	Havre

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CHANGES IN NAMES DECREED IN 1979

Date of Judgment	Original Name	Name Decreed	Residence
Sept. 24, 1979	Teresa Kay Kelly	Teresa Kay McClarnon	Missoula
Sept. 26, 1979	Joan Janette Gariepy	Joanne Janette Gariepy	St. Ignatius
Sept. 27, 1979	Roberta Ann Moan	Roberta Ann Thiesen	Miles City
Oct. 2, 1979	Lynn Hayes Caruso	Lynn Hayes Van Allen	Great Falls
Oct. 5, 1979	Nancy T. Wong	Nancy T. Tam	Butte
Oct. 9, 1979	Margaret Ann McGinnis	Margaret Ann Downs	Yellowstone Co.
Oct. 9, 1979	Arden Zastoupil	Arden Stephen Riemann	Glendive
Oct. 11, 1979	Herman Jeremy Callahan	Herman Jeremy Farren	Butte
Oct. 11, 1979	Clifford Todd Campbell	Clifford Todd Heidrick	Missoula
Oct. 11, 1979	Diana Laureen Campbell	Diana Laureen Heidrick	Missoula
Oct. 11, 1979	Rhonda Sue Campbell	Rhonda Sue Heidrick	Missoula
Oct. 11, 1979	Shawn Mauray Campbell	Shawn Mauray Heidrick	Missoula
Oct. 11, 1979	Sheila Marie Campbell	Sheila Marie Heidrick	Missoula
Oct. 23, 1979	Lillian Marie Beecham	Lillian Marie McConnell	So. Dakota
Oct. 25, 1979	Magda Fontaine	Kelly Fontaine	Missoula
Oct. 25, 1979	Evone Rae Siebenaler	Evone Rae Driggs	Anaconda
Oct. 25, 1979	Robert Leroy Siebenaler, Jr.	Robert Leroy Driggs	Anaconda
Oct. 30, 1979	Jonathan Albert Aisenbrey	Jonathan Albert Therriault	Missoula Co.
Nov. 2, 1979	Glenda Mae Ashe	Glenda Mae Lenhart	Missoula
Nov. 5, 1979	Dee Vern Miller	Steven Dee Vern Miller	Bozeman
Nov. 5, 1979	Linda Louise Murray	Linda Louise Shaffer	Colstrip
Nov. 5, 1979	Rose Adina Styberski	Rose Adina Griffith	Miles City
Nov. 5, 1979	Linda Ann Hutchison Warner	Lynda Ann Plubell Warner	Bozeman
Nov. 7, 1979	Jill Gatlin	Jill Schumacher	Broadus
Nov. 8, 1979	Stephen Franklin Kelly	Stephen Franklin Shanahan	Helena
Nov. 8, 1979	Wendy Kim Seiffert	Wendy Kim Deschon	Helena
Nov. 13, 1979	Douglas Jansen Youngday	Douglas Jansen Young	Bozeman
Nov. 16, 1979	Gregory Scott LaMaur	Gregory Scott LaMaur Smith	Whitefish
Nov. 16, 1979	Victoria Jean LaMaur	Victoria Jean LaMaur Smith	Whitefish
Nov. 16, 1979	Beverly Rollins Mikesell	Beverly Rollins	Forsyth
Nov. 19, 1979	Cynthia Jeanne Wylie	Cynthia Jeanne Kelleher	Colstrip
Nov. 28, 1979	Jon Jacob Wilson	Jon Jacob Sletten	Anaconda
Nov. 29, 1979	Elaine Marie Merganthaler	Tamilynn Williams	Helena
Dec. 3, 1979	James Colapietro	James Calveri	Cascade Co.
Dec. 7, 1979	Elizabeth Ann Marion Smith, a/k/a Elizabeth Ann Marion, a/k/a Betty M. Smith, a/k/a Betty Ann Smith, a/k/a Judy Marion Smith	Judy Marion Smith	Yellowstone Co.
Dec. 12, 1979	Glenn Stone	Glenn Kurtz	Anaconda
Dec. 18, 1979	Kathryn L. Novak	Kathryn L. Robbins	Arizona
Dec. 20, 1979	Patricia Louise Evans	Patricia Louise duToit	Butte
Dec. 27, 1979	Jay Wesley Wanner	Jay Wesley Nichols	Deer Lodge
Dec. 31, 1979	Jarrod Alan Bawden	Jarrod Alan Cain	Miles City
Dec. 31, 1979	Linda Love Ringing Shield	Linda Love Hart	Miles City

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CHANGES IN NAMES DECREED IN 1980

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 3, 1980	Mary Balch Cummings	Birch	Missoula
Jan. 3, 1980	Linda Lee Summers	Lynne Marie Summers	Missoula
Jan. 4, 1980	Pamela Kaye Coberley	Pamela Kaye Hedman	Whitefish
Jan. 7, 1980	Lorraine Doris Fettig	Lorraine Doris Baluski	Havre
Jan. 8, 1980	Farrah Michele Brown	Farrah Michelle Stong	Billings
Jan. 8, 1980	Myranda Lynn Brown	Myranda Lynn Stong	Billings
Jan. 8, 1980	Tanya Kay Brown	Tanya Kay Stong	Billings
Jan. 9, 1980	Beverly Goodale	Beverly Blaine	Billings
Jan. 9, 1980	Cal Edward Goodale	Cal Edward Blaine	Billings
Jan. 11, 1980	Sheri Lynn Loran	Sheri Lynn Sullivan	Butte
Jan. 14, 1980	Dustin Roy Welch	Jacob Eldon Roy Welch	Lincoln Co.
Jan. 21, 1980	Karen Ann Kinne	Karen Ann Kreyeski	Miles City
Jan. 22, 1980	Norma June Allen	June Allen	Helena
Jan. 24, 1980	Graham Jamal Dye	Graham Jamal Hill	Billings
Feb. 5, 1980	Carol S. Broad	Carol S. Ott	Kalispell
Feb. 11, 1980	Daniel Lee Sarver	Daniel Lee Koppenstein	Miles City
Feb. 14, 1980	Susan Blackwell Erb	Susan Blackwell	Miles City
Feb. 15, 1980	Lynn J. Gillison	Lynn J. Bickle	Billings
Feb. 19, 1980	Tara Anne Holt	Tara Anne Thompson	Cascade Co.
Feb. 22, 1980	June Marie Ranta	June Marie Carroll	Miles City
Feb. 25, 1980	Alice Fern McManus	Norma McManus	Kalispell
Feb. 25, 1980	Meredith A. St. Pierre	Meredith A. Molkjer	Havre
Feb. 25, 1980	William Brant Slocum	William Brant Strissel	Havre
Feb. 26, 1980	Jennifer Marie Bell	Jennifer Marie Frigge	Billings
Feb. 27, 1980	Lester Fred Nedens	Lester Fred Ryder	Billings
Feb. 28, 1980	Alexa Dee Cozzens	Alexa Dee Wolff	Miles City
March 3, 1980	Jeanne L. Harville	Jeanne L. Morningstarr	Bozeman
March 3, 1980	Michael Dean Inman	Michael Dean Inman Mills	Glendive
March 5, 1980	Anita M. Kaasa	Anita M. Blake	Malta
March 10, 1980	Robert Alexander Hunt	Robert Alexander Kimes	Helena
March 12, 1980	Patricia Frickle	Patricia Kenney	Fergus Co.
March 20, 1980	Annette JoLynne Moraca	Annette JoLynne Thompson	Missoula Co.
March 20, 1980	Brian Keith Moraca	Brian Keith Thompson	Missoula Co.
March 20, 1980	Keith Armin William Moraca	Keith Armin William Thompson	Missoula Co.
March 20, 1980	Sandra Gaye Moraca	Sandra Gaye Thompson	Missoula Co.
March 21, 1980	Bradlee Deana Eckart	Bradlee Deana Brady	Miles City
March 26, 1980	James John Joyce	James John Cheff	Lake Co.
March 27, 1980	Marie Helene Hughes	Marie Helene Shirley	Miles City
March 28, 1980	Stacey Delaine Schmockel	Stacey Delaine Azure	Havre
April 1, 1980	Cleone Portra	Cleone Crusch	Roosevelt Co.
April 1, 1980	Carl Medford Wagnon, Jr.	Carl Harold Jesse	Livingston
April 2, 1980	Daniel Lee DeMint	Daniel Lee VanCleave	Miles City
April 2, 1980	Janis Lynn Tonn	Janis Lynn Gilpin	Miles City
April 4, 1980	Cyntia Lee Posey	Cyntia Lee Erickson	Billings
April 4, 1980	Jenny Lou Posey	Jenny Lou Erickson	Billings
April 7, 1980	Robert Carnline	Robert A. Swanson	Helena
April 7, 1980	Lester Emerson Olsen, a/k/a Lester Emerson Olson	Lester Emerson Alterowitz	Red Lodge
April 7, 1980	Florence Irene Sauerbier	Florence Irene Leslie	Kalispell
April 7, 1980	Harold Leslie Sauerbier	Harold Leslie	Kalispell
April 9, 1980	Jeffrey Robert Flinders	Jeph Robert Fleharty	Fergus Co.
April 9, 1980	Julie Ann Flinders	Julie Ann Fleharty	Fergus Co.
April 11, 1980	Barbara Louise Thomson	Barbara Louise Morrison	Miles City
April 14, 1980	Edward James Kennedy	Jasper Alan Keene	Missoula
April 14, 1980	Jesse Jay Kettle	Jesse Jay Keene	Missoula
April 14, 1980	Julia Ann Warshauer	Julie Ann Keene	Missoula
April 17, 1980	Cleo B. Scoville	Cleo B. Hackert	Powell, Wyo.
April 21, 1980	Jennifer Lynn Alexander	Jennifer Lynn Judkins	Bridger
April 21, 1980	Esther V. Deines	Esther V. Kalmback	Glendive
April 28, 1980	Lois D. Corsant	Lois D. Howell	Fergus Co.
April 29, 1980	Chad Matthew Kooken	Chad Matthew Goss	Helena
May 1, 1980	Laszlo Jason Szenes	Morgan Hunter	Ferndale
May 5, 1980	Marvin Edwin Durham	Fritz Edwin Durham	Bozeman
May 5, 1980	Jacquelyn Kate Miller	Jacquelyn Kate Williams	Missoula
May 5, 1980	Klayton Sheldon Miller	Klayton Sheldon Williams	Missoula
May 5, 1980	Kristy-Ann Kay Miller	Kristy-Ann Kay Williams	Missoula
May 6, 1980	Thomas Powell Langmaid	Thomas Alan Langmaid	Cascade Co.
May 7, 1980	Mark William Sirnori	Mark William Prater	Terry

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CHANGES IN NAMES DECREED IN 1980

Date of Judgment	Original Name	Name Decreed	Residence
May 9, 1980	Yvonne Andersen	Yvonne Ketchum	Miles City
May 9, 1980	Gloria McEwen	Gloria Angelly	Butte
May 12, 1980	Mary Ellen Hand	Mari Ellen Hand	Gallatin Gateway
May 13, 1980	Bryan Keith Rucker	Bryan Keith Vickroy	Gardiner
May 15, 1980	Dean Scott Eckersley	Dean Scott Burnham	Superior
May 15, 1980	Robert Neil Wikert	Robert Neil Weikert	Missoula
May 16, 1980	Dolores Elaine Simpson	Elaine Adwyna Simpson	Big Sky
May 20, 1980	Joyce Wilma Speer	Joyce Wilma Ulrich	Miles City
May 21, 1980	Mary Jeanice Bruce	Mary Jeanice Gray	Glasgow
May 23, 1980	Brandon Michael Holzworth	Brandon Michael Jones	Roundup
May 23, 1980	Jeffrey Wayne Noblin	Jeffrey Wayne Pedersen	Billings
May 23, 1980	Mari Sahar Posey	Mari Sahar Erickson	Billings
May 27, 1980	John Joseph Hoffman	John Joseph East	Bozeman
May 27, 1980	Kelli Denise Hoffman	Kelli Denise East	Bozeman
May 27, 1980	Victor Dean Whitaker	Victor Dean Benjamin	Philipsburg
June 4, 1980	Denise Marie Meyer	Denise Marie Wohlgenant	Miles City
June 9, 1980	Sharon Loretta Bice	Sharie Nicole Bice	Rosebud
June 12, 1980	Jackie Teresa Fisher	Jackie Teresa Trankel	Helena
June 12, 1980	Diana L. Isaacs	Diana L. Gunderson	Miles City
June 16, 1980	Ovrinl Lorraine Graul	Ovril Lorraine Graul	Cascade Co.
June 16, 1980	Petronella Graul	Patty Elizabeth Graul	Cascade Co.
June 17, 1980	Michael Lynn Harrell	Mitchel Lynn Palmer	Billings
June 19, 1980	Kline Dalton	Shirley Kline	Cascade Co.
June 23, 1980	Richard Christopher Newman, a/k/a Eric John Hier, a/k/a Eric John Trow	Eric John Newman	Ennis
June 30, 1980	Barbara Loretta Bennett	Barbara Loretta Weldon	Missoula
July 1, 1980	Gloriette Gwin	Gloriette Fraucelle Gwin	Roosevelt Co.
July 1, 1980	Tammy Lynn Irwin	Tammy Lynn Mann	Roosevelt Co.
July 1, 1980	Alison Marie Welch	Alison Marie Mann	Roosevelt Co.
July 1, 1980	Michael Francis Welch	Michael Francis Mann	Roosevelt Co.
July 2, 1980	Scott Allen Hall	Scott Allen Darling	Columbia Falls
July 9, 1980	Hazel M. Garrett	Hazel M. Dumas	Miles City
July 9, 1980	Sharon Kae Hess	Sharon Kae Flatness	Bozeman
July 10, 1980	Vicki Giordano	Vicki Sterling	Miles City
July 14, 1980	John Michael Cunningham	John Michaels	Lincoln Co.
July 21, 1980	Sarah Lynn Wilkinson	Sarah Lynn Googe	Bozeman
July 22, 1980	Janet Lynn White	Janet Lynn Archambeau	Miles City
July 25, 1980	Viola M. Webster	Viola M. Jones	Miles City
July 25, 1980	Yellowstone Boys Ranch	Yellowstone Boys and Girls Ranch	Yellowstone Co.
Aug. 1, 1980	Diana Marie Longfellow	Diana Marie Walker	Yellowstone Co.
Aug. 1, 1980	Jeremiah David Stroud	Jeremiah David Splitstone	Yellowstone Co.
Aug. 1, 1980	Raymond Joe Stroud	Raymond Joe Splitstone	Yellowstone Co.
Aug. 4, 1980	Linda T. Gow	Erlinda Villones	Missoula
Aug. 7, 1980	Velinda Gaye Guenther	Velinda Lander Guenther	Kalispell
Aug. 18, 1980	Debra Ann Garding	Debra Ann Handsaker	Miles City
Aug. 18, 1980	Loren James Garding	Loren James Handsaker	Miles City
Aug. 18, 1980	Ruth M. Oddy	Ruth M. Vaughan	Miles City
Aug. 20, 1980	David Bruce Bracco	David Bruce Egedahl	Butte
Aug. 20, 1980	Khristine Marie Bracco	Khristine Marie Egedahl	Butte
Aug. 20, 1980	J. D. Paro	Jason Daniel Paro	Cascade Co.
Aug. 21, 1980	Linda E. Barron	Linda E. Spillum	Circle
Aug. 25, 1980	Randall Warren Martin	Randall Warren Stuker	Havre
Aug. 26, 1980	Cheryl Ann Parpart, a/k/a Cheryl Ann Levy	Cheryl Ann Reising	Kalispell
Aug. 28, 1980	Karen Elizabeth Justice	Karen Elizabeth Schiffer	Rosebud
Aug. 29, 1980	Randy Michelle Billingsley	Randy Martin Leibenguth	Ravalli Co.
Sept. 2, 1980	Dona Jean Bair	Dona Jean Main	Miles City
Sept. 2, 1980	Robin Lee Bright	Robin Leah Bright	Cascade Co.
Sept. 2, 1980	Robert Edmund Lea	Minor Robert Edmund Lea	Helena
Sept. 4, 1980	Carol Collette Deitschler	Carol Collette Childers	Casper, Wyo.
Sept. 8, 1980	Frank Wetch, junior	Aaron Starr	Cascade Co.
Sept. 9, 1980	Eugene Paul Gilpin	Eugene Paul Canfield	Livingston
Sept. 10, 1980	Debra Lynn Clauson	Debra Lynn Moore	Cohagen
Sept. 10, 1980	Nicholas Paul Prociw	Paul Nicholas Prociv	Cascade Co.
Sept. 15, 1980	Laura LaVerne Purkett	Laura LaVerne Maynard	Bozeman
Sept. 19, 1980	William Richard Sorenson	William Sorenson Rocksund	Whitefish

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CHANGES IN NAMES DECREED IN 1980

Date of Judgment	Original Name	Name Decreed	Residence
Sept. 19, 1980	Cindy LaRae Verworn	Cindy LaRae Brown	Miles City
Sept. 24, 1980	Harold Eugene Parks	Harold Michael Parks	Helena
Sept. 29, 1980	Renee Lynn Miller	Renee Lynn Nilsen	Miles City
Sept. 29, 1980	Valerie Dale Van Zee	Valerie Dale Day	Lincoln Co.
Sept. 29, 1980	Victoria Isabel Van Zee	Victoria Isabel Day	Lincoln Co.
Oct. 2, 1980	Rena Ann Crowder	Rena Ann Norman	Malta
Oct. 3, 1980	Loren Kim Tinsley	Loren Kim Talkington	Colstrip
Oct. 6, 1980	Heidi Katherine Karsky	Heidi Katherine Bibeau	Bozeman
Oct. 6, 1980	Mencella Lee Mendenhall	Mencella Lee Carey	Miles City
Oct. 8, 1980	Erma Dell Fischer	Erma Dell Stevenson	Fallon
Oct. 9, 1980	Daniel Gene Quimette	Daniel Gene Glover	Kalispell
Oct. 10, 1980	Teresa Darlene Haas	Teresa Darlene Keeland	Miles City
Oct. 15, 1980	Alan Jay Kovanenko	Charles Alan Kovalenko	Lincoln Co.
Oct. 17, 1980	Geraldine L. Cooney	Geraldine L. Green	Butte
Oct. 17, 1980	Catherine Anne Lien	Catherine Ann Frint	Havre
Oct. 17, 1980	Michael Robert Lien	Michael Robert Frint	Havre
Oct. 17, 1980	Teri JaVae Lien	Teri JaVae Frint	Havre
Oct. 17, 1980	Toni Marie Lien	Toni Marie Frint	Havre
Oct. 20, 1980	Patricia D. Kuntz	Patricia D. Lloyd	Miles City
Oct. 20, 1980	Kenneth George McCraugh	Kenneth George McBain	Bridger
Oct. 20, 1980	Julie I. Murphy	Julie I. Neumann	Miles City
Oct. 23, 1980	Michael Lynn Hagan	Michael Lynn Marston	Miles City
Oct. 23, 1980	Debra Kay Iszler	Debra Kay King	Miles City
Oct. 23, 1980	Marjorie Eulita Martratt	Marjorie Eulita Harper	Yellowstone Co.
Oct. 27, 1980	Jess Weston Carpenter	Jess Weston Bouma	Missoula
Oct. 28, 1980	Mary A. Bell	Mary A. Acherslott	Philipsburg
Oct. 28, 1980	Deborah Kay Mollgaard	Deborah Kay Pollack	Yellowstone Co.
Oct. 28, 1980	January Lynn Tyler	January Lynn Slovak	Yellowstone Co.
Oct. 29, 1980	Sara Margaret Domogalla	Sara Margaret Nelson	Cascade Co.
Oct. 30, 1980	David Eugene Malley	David Eugene O'Malley	Helena
Oct. 31, 1980	Jeremy Joe Galles	Jeremy Joe Broers	Whitefish
Oct. 31, 1980	Lorna Rae LeMay	Lorna Rae Boyd	Yellowstone Co.
Nov. 3, 1980	Ellen Austin Goers	Ellen Austin	Helena
Nov. 3, 1980	Dustin Trevor Harvey	Dustin Trevor Neumann	Fromberg
Nov. 3, 1980	Marcy Diane Kelly	Marcy Roby Kelly	Colstrip
Nov. 3, 1980	Terry Ann Stevenson	Terry Ann Painter	Warm Springs
Nov. 3, 1980	Thomas Michael Stevenson	Thomas Michael Painter	Warm Springs
Nov. 3, 1980	Jamie Lynn Velarde	Jamie Lynn Velarde Kroll	Helena
Nov. 3, 1980	Jessie May Velarde	Jessie May Velarde Kroll	Helena
Nov. 14, 1980	Martha Evelyn Lawrence Layman	Martha Evelyn Lawrence	Missoula
Nov. 17, 1980	Sandra Jane Buchholtz	Sandra Jane Cantrell	Missoula Co.
Nov. 17, 1980	Pete Allen Clapper	Pete Allen Haacke	Missoula
Nov. 18, 1980	Catherine Jean Hollensteiner	Katherine Jean Hollensteiner	Bozeman
Nov. 18, 1980	William Hans Hollensteiner	William Stahl Hollensteiner	Bozeman
Nov. 18, 1980	Aaron Lynne Makela	Aaron Lynne Kovar	Columbia Falls
Nov. 18, 1980	Brent Lee Makela	Brent Lee Kovar	Columbia Falls
Nov. 18, 1980	Justin Niles Makela	Justin Niles Kovar	Columbia Falls
Nov. 21, 1980	Betty J. Way	Betty J. Butts	Miles City
Nov. 24, 1980	Terry JoAnn Nilsen	Terri JoAnn Mayberry	Miles City
Nov. 25, 1980	Margaret Carol Christianson	Margaret Carol Cain	Miles City
Nov. 25, 1980	Susan Diane Taylor	Susan Diane Hardy	Kalispell
Nov. 26, 1980	Donna Kelsey	Donna Jordan	Clinton
Dec. 3, 1980	Isla June Yamamoto	Isla June Welch	Helena
Dec. 4, 1980	Vivian Florence Riggs	Vivian Florence Strong	Miles City
Dec. 8, 1980	Kristin Elvira Brown	Kristin Elvira Strouf	Fergus Co.
Dec. 8, 1980	Merlin Dylan Doyle	Merlin Dylan Long	Helena
Dec. 8, 1980	Jody Marie Fritz-McGuire	Jody Marie Fritz	Missoula
Dec. 9, 1980	Howard Robert William Crumbaker	Howard Robert Crumbacher	Yellowstone Co.
Dec. 9, 1980	Norma Aino Crumbaker	Norma Aino Crumbacher	Yellowstone Co.
Dec. 11, 1980	Laurie Ann Saukerson	Laurie Ann Flynn	Miles City
Dec. 12, 1980	Bryce Clinton Wanders	Bryce Clinton Swafford	Fergus Co.
Dec. 12, 1980	Heather Betsy Wanders	Heather Betsy Swafford	Fergus Co.
Dec. 15, 1980	Richard Duane Schneider	Richard Duane Langan	Colstrip
Dec. 17, 1980	Baby Boy Mikkelson	Trent William Hess	Fallon
Dec. 19, 1980	Susan Jo Francis	Susan Jo Harvey	Yellowstone Co.

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CHANGES IN NAMES DECREED IN 1980

Date of Judgment	Original Name	Name Decreed	Residence
Dec. 29, 1980	Donata Carmen Marie Basterrechea	Donata Carmen Marie Beauchot	Miles City
Dec. 29, 1980	James Michael Basterrechea	James Michael Beauchot	Miles City
Dec. 29, 1980	David Maurice Gliko	Reece Stokes Gliko	Cascade Co.
Dec. 29, 1980	Nancy Lee Gottfried	Marilyn Elizabeth Gottfried	Bozeman
Dec. 29, 1980	Edward Jason Shubat	Jason Michael Shubat	Cascade Co.
Dec. 30, 1980	Alison Sata Hart	Alison Eve Hart	Cascade Co.
Dec. 31, 1980	Eric Travis Yellow Bear	Eric Travis Turns Plenty	Bozeman

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